MINISTRY OF RECONSTRUCTION.

THIRD REPORT

OF THE

ACQUISITION AND VALUATION OF LAND COMMITTEE

ON THE

ACQUISITION FOR PUBLIC PURPOSES OF RIGHTS AND POWERS IN CONNECTION WITH MINES AND MINERALS.

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MINISTRY OF RECONSTRUCTION.

Committee on the Acquisition for Public Purposes of Rights and Powers in connection with Mines and Minerals.

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MR. ROBERT H. DRAYTON, ASSISTANT SECRETARY.

TERMS OF REFERENCE.

To consider and report :—

1. Whether, and if so to what extent, the general principles appropriate to the Acquisition and Valuation of Land for public purposes should be applicable to the special case of mines and minerals.

2. What action is desirable to meet the difficulty of obtaining on reasonable terms :—

   (*a*) wayleaves, both above and below ground ;

   (*b*) surface rights ;

   when such Wayleaves or Surface Rights are required for the erection or extension of plant or premises in connection with the development of the Nation's mineral resources.

3. Generally, whether any, and if so what, action is desirable to limit or extinguish the loss to the nation occasioned by leaving valuable products in mines for the purpose of supporting the surface, or as barriers, or by being landlocked, or by restrictive covenants, or otherwise.

4. What changes are advisable in the law in connection with questions of support.

* Mr. Stephen Walsh, M.P., owing to pressure of other official engagements, was unable to attend the meetings of the Committee, and resigned in March last. As the work of the Committee was then almost complete, the vacancy was not filled.

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OF THE

ACQUISITION AND VALUATION OF LAND COMMITTEE

ON THE

ACQUISITION FOR PUBLIC PURPOSES OF RIGHTS AND POWERS IN CONNECTION WITH MINES AND MINERALS.

To the Right Honourable
SIR AUCKLAND GEDDES, K.C.B., M.P.,
Minister of Reconstruction.

SIR,

In our First Report* we left certain questions relative to the development of the nation's mineral resources which had been specially referred to us to be dealt with in another Report, which we are now in a position to submit.

For the purpose of this enquiry the Minister of Reconstruction (Dr. Addison) requested us in February, 1918, to consider and report upon the following specific points:—

(1) Whether, and if so to what extent, the general principles appropriate to the Acquisition and Valuation of land for public purposes should be applicable to the special case of mines and minerals.

(2) What action is desirable to meet the difficulty of obtaining on reasonable terms—

(a) wayleaves, both above and below ground;
(b) surface rights.

when such wayleaves or surface rights are required for the erection or extension of plant or premises in connection with the development of the Nation's mineral resources.

(3) Generally, whether any, and if so what, action is desirable to limit or extinguish the loss to the Nation occasioned by leaving valuable products in mines for the purpose of supporting the surface, or as barriers, or by being landlocked or by restrictive covenants, or otherwise.

(4) What changes are advisable in the law in connection with questions of support.

The Members of our Committee who have served on this Committee are: Mr. Leslie Scott, K.C., M.P., Chairman, Mr. A. S. Comyns Carr, Mr. James Inglis Davidson, Mr. Dixon H. Davies, Mr. Ellis Davies, Mr. George M. Freeman, K.C., Sir William S. Haldane, Sir William Middlebrook, M.P., Sir Arthur Thring, K.C.B.

2. In order to strengthen the Committee in the investigation and decision of the problems referred to us, additional members with special knowledge and practical experience of the subject were appointed to the Committee. The additional members so appointed were Mr. W. Forster Brown, Sir Adam Nimmo, K.B.E., Sir Thomas Ratcliffe-Ellis, Mr. C. E. Rhodes, Sir Robert Elliott-Cooper, K.C.B., and Mr. Stephen Walsh, M.P. We regret that Mr. Stephen Walsh was prevented by official engagements during the last Parliament from attending the meetings of the Committee, and that, in consequence, he resigned. The assistance of these gentlemen has been of the greatest value to the Committee, and their attendance has also rendered it unnecessary to take much evidence on the general points referred to us, though we have obtained information from various sources on special points which have arisen in the course of our investigation.

3. The Committee have held 29 meetings, and have considered the Reports† of other Committees on relevant subjects. The Committee have also considered memoranda on various subjects, and have asked for and received information on points of practical experience from men engaged in the mining industry. The Committee are especially indebted to Mr. R. F. MacSwinney for the valuable assistance he has freely accorded in this way. The Committee have also had the advantage of conferring with Sir Malcolm Delevingne, K.C.B., of the Home

* First Report of the Committee dealing with the Law and Practice relating to the Acquisition and Valuation of Land for Public Purposes, Cd. 8998.

† Among other Reports we have considered the Reports of:—The Royal Commission on Housing in Scotland, Cd. 8731; The Coal Conservation Committee of the Ministry of Reconstruction, Cd. 9084; The Department for the Development of Mineral Resources in the United Kingdom, Cd. 9184.

Office, and of hearing the evidence of Mr. James Watson, Solicitor to the North British Railway Company.

In view of the urgent necessity of making known as soon as possible our recommendations on the questions referred to us, we submitted an Interim Report* on the 18th March last, in which we outlined the recommendations which we have dealt with in greater detail in this Report.

We do not in this Report deal with the valuation of mines and minerals either for the purpose of acquisition or taxation. This subject will be considered in a subsequent Report.

Special circumstances govern the practice of mining in the Forest of Dean, the Hundred of High Peak, and certain other manors and places where the property in mines is vested in the Crown. Our recommendations in this Report are intended to be of general application, and we have not dealt with the special circumstances which affect these districts.

4. We commenced our investigations by considering the causes of loss to the nation of its mineral resources. These causes may either result in the permanent loss to the nation of mineral resources, or at least lead to undue delay in their development. The causes of loss may be summarised shortly under the following heads:—

(i) Where the owner of minerals is unwilling to sell, lease, or otherwise deal with them. In some of these cases the owner is unreasonable, and it may be clearly in the national interest that the minerals should be worked. In others it cannot be said that the owner in refusing permission to work is unreasonable, but it may be, nevertheless, that the interests of the nation should prevail over the private interests of the owner. In both cases, so long as no means exist for compelling the owner to grant facilities for working the minerals, they are lost to the nation, either permanently or for the time being.

(ii) Where the owner of an area of minerals demands exorbitant terms for permission to work. In such cases it often happens that the area becomes land-locked, as, once the adjoining worker has passed the area he is working, it would not pay him to return, and if the area is too small to justify the expense of sinking a shaft, the minerals are permanently lost.

(iii) Where minerals lie under land which is copyhold, customary freehold or enfranchised copyhold, and, either the Lord of the Manor on the one hand, or the copyholder (whether enfranchised or not) or customary freeholder on the other, refuses to join in a lease.

(iv) Where minerals are owned in small separate areas by a number of different owners, or, where, in an area of whatever size, the minerals are owned by a number of owners as tenants in common, and, in consequence, it is difficult, or even impossible, to obtain agreement.

(v) Where the mineral owner, although willing to grant all reasonable facilities for development, has no power to do so owing to some legal disability.

(vi) Where an owner with a title to minerals cannot be traced.

(vii) Where the owner of the surface has a legal right to the support of the surface by the minerals underneath or adjoining. In many cases the owner or lessee of the minerals has no right to let down the surface even on the terms of accepting liability for all damage caused to the surface by subsidence; if the minerals are worked, the owner of the surface can usually obtain an injunction restraining him from working on mere proof that substantial subsidence will be caused. There are also cases where, although the mineral worker† has the right to let down the surface, he can only do so on payment of all damage caused. In such cases the possibility of subsidence causing greater damage than the profit to be made by working the minerals makes him unwilling to take the risk. Minerals thus left unworked are, for the most part, permanently lost to the nation.

(viii) Where coal is left in barriers on the boundary to divide one mine from another or to prevent the flow of water from other workings on a higher level. The total area of minerals left in barriers is very large, and a great saving would be effected if some portion only could be worked. Such barriers are usually left pursuant to covenants in the lease of the mines and cannot be gotten except by permission of the lessor. But mineral workers, even where they are free to do so, hesitate to take the responsibility of working such barriers, because of the risks involved, both to their own mine and to those on a lower level, if a mistake were made and an inrush of water occurred. Where a barrier cannot be touched without danger to the men working in the mine it must, of course, remain.

(ix) Where owners refuse to grant or demand unreasonable terms for wayleaves, either above or below ground. The mineral worker, in order to work his mine efficiently and economically, as it is in the national interest that he should do, requires, on the surface, rights of access to railways, canals, highways, etc., and, below the surface, rights of passage through minerals belonging to others. If such rights or wayleaves are denied to him, or are only obtainable on unreasonable terms, it may become impossible or commercially impracticable to work certain minerals. As a result, they are lost, or, at any rate, the economical development of the mine is impeded.

(x) Where there is difficulty in obtaining on reasonable terms the surface rights

* Note.—Copy attached hereto. See Appendix III.

† Note.—Throughout this Report the term "mineral worker" is used to mean the individual or company, whether owner or lessee, who is working the minerals in question. For convenience we have also employed English phraseology, and have confined our references to English enactments.

which are necessary to the efficient working of a mine. As an instance, a mineral worker may have an insufficient area of surface ground for dumping his waste products, and, as the working of the mine proceeds, he will be seriously hampered unless he can obtain reasonable facilities. Similar considerations apply to land needed for providing suitable housing accommodation for employees; for the erection of coke ovens or other by-product plants; and the acquisition of water and other rights, such as clay, sand, etc. In all such cases, where there is no independent authority to compel, the price of accommodation land or facilities may be excessive. This difficulty is, of course, not limited to mining enterprise.

(xi) Where restrictive covenants affecting either surface or minerals, imposed for the protection of the surface owner, impede the development of the minerals.

(xii) Where, owing to unforeseen circumstances, or to the conditions imposed on a mining lessee by the terms of his lease, a mining lessee finds himself unduly hampered in the development of a mine, or of certain seams in the mine, unless he can obtain some modification or readjustment in the terms of the original bargain.

(xiii) Where the "lay out" of a mineral field and its apportionment among different mineral workers (being determined by the accidents of surface ownership) are, from a technical mining point of view, unsatisfactory, and the productivity of the field, as a whole, or of some of the mines in it is, contrary to the national interest, thereby prejudiced.

(xiv) Where any individual mine is so mismanaged as to cause loss of minerals to an extent inconsistent with the national interest.

SECTION I.

The Jurisdiction of the Sanctioning Authority with regard to Mines and Minerals—A Government Mining Department.

5. In our First Report we recommended that a new Sanctioning Authority should be created, and that to this Sanctioning Authority should be referred every application for power to acquire land compulsorily, with certain exceptions in the case of Local Authorities. The constitution of the Sanctioning Authority is designed to prevent them from developing any fixed executive policy. Being composed of members of both Houses of Parliament, with the addition of outside members of experience in various spheres of national life, and having power to call as witnesses expert advisers on special questions, they will always be in touch with the requirements of the Commercial and Industrial community, and be qualified to consider the development of the nation's resources on the broadest basis, and to facilitate such development on the lines which from time to time may be required. Such an Authority will be in effect a Joint Committee of the two Houses of Parliament, and the control of Parliament over the actions of the Sanctioning Authority will be maintained by the constitution of the Sanctioning Authority, and by the power of appealing to Parliament whenever a question of policy is involved. The Authority, as pointed out in our First Report, is a panel from which selected Commissioners will deal with each case on its merits as does a Parliamentary Committee. They will not, therefore, be a Department which might develop a stereotyped policy and the decision of the Commissioners on the facts and general merits of each individual case will be final.

The problems affecting the Mining Industry, for the solution of which compulsory Orders may be required, should only be decided on broad lines of economic policy after full consideration of the various interests affected, and compulsory orders should only be granted if they are clearly in the national interest. At the present time, there is no authority in existence other than Parliament themselves which is competent to exercise such jurisdiction. To secure efficiency, the procedure must be simple, cheap and expeditious. To attain this object it is obvious that Parliament must delegate their authority in order to deal effectively with the number of small cases which we anticipate will require consideration. It will be noted that in our First Report we recommended that, where the case was small, or the issues raised were likely to be simple, the decision should be made by a single Commissioner, instead of a Chairman and two or more Commissioners, which would be necessary in larger or more complicated cases.

We think, therefore, that the constitution of the Sanctioning Authority, as proposed in our First Report, is well adapted to deal with the difficulties affecting the Mining Industry which we have indicated above. We further think that **the Sanctioning Authority should be the only authority having power to make Orders for the compulsory acquisition or working of minerals, or of rights in over or under land, affecting the working of such minerals.**

6. As the Sanctioning Authority will not have any executive powers, and will not themselves be equipped with records and expert knowledge, we are agreed that a Government Mining Department will be necessary. That Department should possess the records required to give full information with regard to all mines, whether working or abandoned; should have an expert staff

qualified to advise the Sanctioning Authority, when required, on any technical questions, whether of general policy or of particular application; and should, by their inspectors, be able to ensure that any directions or conditions contained in the orders of the Sanctioning Authority are duly performed. It would be the duty of the Government Mining Department to entertain and examine applications made to the Sanctioning Authority; to examine the plans for the development of fresh mines which we recommend later in this Report should be lodged with the Mining Department; and, as the Mining Department would, through their Records or Inspectors, become aware of cases where minerals were not being worked, which should in the national interest be worked, but where no person was sufficiently interested to make an application to the Sanctioning Authority, the Mining Department should have power to initiate proceedings by making recommendations to the Sanctioning Authority.

In order that the power for good of the Mining Department should not depend upon the existence of a party willing to undertake the working of minerals which ought, in the national interest, to be worked, the Mining Department should, as we recommend later, be empowered by the Sanctioning Authority, as a last resort, to work the minerals themselves.

We are of opinion that the Mining Department should be entrusted with all powers and duties which are necessary to enable them to supervise and control the development of the mineral resources of the United Kingdom. We recognise that the adoption of this principle will involve the transfer to the Mining Department of certain powers and duties at present entrusted to other Government Departments. In this connection we have considered the Interim Report of the Mining Sub-Committee of the Coal Conservation Committee. That Committee (in paragraphs 7, 8, and 9 of their Report) recommended that a Ministry of Mines should be created to which there should be assigned, with certain exceptions, all the functions vested in various Government Departments before the war in the matter of the Coal Mining Industry, and also that that Ministry should undertake certain new duties in regard to mining education, research, regulations as to safety and health, and local mining problems. We concur with these recommendations, save in so far as they relate to a Ministry of Mines. But, while, as we indicate later in this Report (paragraph 8), we are not in favour of the creation of a separate Ministry of Mines, we are agreed that the duties referred to in the Report of the Mining Sub-Committee of the Coal Conservation Committee should be carried out by the Mining Department, and that such duties should not be limited to the Coal Mining Industry, but should apply to all types of mines.

We think that the Mining Department should be responsible for supervising the system of exploring and testing undeveloped minefields in the country. In the main, this is, in our opinion, successfully carried out by private enterprise, but we consider that the Mining Department should have power, when, in their opinion, it is necessary, themselves to carry out the exploration. We do not think it to be within the terms of our reference to make any recommendation as to what policy should be adopted in regard to mineral wealth discovered as a result of the activities of the Mining Department in this direction.

7. As the Sanctioning Authority are, under our scheme, to be the only authority having power to make compulsory Orders for the acquisition of land, or minerals, or rights in connection therewith, it follows that the Mining Department will not have any similar or co-extensive powers. The Department will not make any orders affecting the rights of property; but, on the other hand, we do not consider it necessary that cases in which there has not been any declared opposition should be investigated by the Sanctioning Authority. If, after (say) one month from the publication by the Sanctioning Authority of the advertisement of an Order recommended by the Mining Department, no opposition had been declared, the proposed Order might be made automatically by the Sanctioning Authority, and thus avoid the possibility of the Sanctioning Authority being encumbered by a large number of uncontested cases. We therefore recommend that **there should be a Government Mining Department having initiative, advisory and executive powers. Such Department should have power to entertain and examine applications by companies or individuals for leasing or working any minerals, the working of which can be shown to be in the national interest, and may make recommendations as they shall think fit. The Department should also on their own motion make recommendations for the like purposes. The recommendations should take the form of recommending an Order to be made by the Sanctioning Authority. The persons affected should have a right of objection before the Sanctioning Authority within a limited time.**

8. Having agreed on the necessity for the existence of a Government Mining Department, we proceeded to consider the relative advantages of creating a Ministry of Mines, or of entrusting the necessary duties to a Department of the Home Office. We have fully considered the recommendations on this point of the Mining Sub-Committee of the Coal Conservation Committee (paragraphs 7 and 8 of their Interim Report), but we are unable to agree with their recommendations in favour of the creation of a Ministry of Mines for the purpose of making the necessary Orders to carry out the policy there advocated. That Committee had not before them our proposals for the creation of a Sanctioning Authority, with power to make such Orders as may be necessary in mining as well as other fields. If the present system of Statutory or Provisional Orders by a Department of the Government were to be maintained, some force would attach to the recommendations of the Mining Sub-Committee of the Coal Conservation Committee that there should be a Ministry of Mines. But, as under our scheme the Sanctioning Authority, as representing Parliament, will have full power to make all such Orders, and the system of Departmental Orders of a legislative nature will be abolished, we are of opinion that a separate Ministry of Mines is both unnecessary and undesirable.

The Home Office are already entrusted with the enforcement of the Mines Regulations

Acts* for which purpose they receive certain information, and record certain returns, and are equipped with a staff of experts and inspectors. We think that the staff at the Home Office would form a good nucleus for the staff of the Mining Department, and that the experience gained by this staff, and the records collected by the Home Office, would be of the greatest assistance to the new Department, and should be utilised. While this is our chief reason for thinking that the Mining Department should be a branch of the Home Office, we think that the necessity for economy in administration should not be overlooked, and it is clear that a considerable saving would be effected by utilising the existing machinery in the manner we propose.

We recommend, therefore, that **the Mining Department should be a branch of the Home Office,** or of any Ministry which may be created to take over the duties of the Home Office in this respect. It should consist, under the Home Secretary, of an Under-Secretary, and such administrative staff as may be necessary for the purpose of the duties assigned to the Department. For the purposes of our scheme we agree with the Mining Sub-Committee of the Coal Conservation Committee (page 4 of their Interim Report) in the opinion that **there should be a strong Advisory Council as an essential part of the administrative machinery of the Home Office** for dealing with the questions arising out of the Reports of the Coal Conservation Committee. We concur in the opinion expressed by the Machinery of Government Committee (paragraph 37, page 12 of their Report) on this point as follows:—

> "So long as advisory bodies are not permitted to impair the full responsibility of Ministers of Parliament, we think that the more they are regarded as an integral part of the normal organisation of a Department, the more will Ministers be enabled to command the confidence of Parliament and the public in their administration of the services which seem likely in an increasing degree to affect the lives of large sections of the community."

9. In regard to matters falling within our own Terms of Reference, we consider the functions of such a Council to be of the greatest importance. The recommendations of the Mining Department, and also regulations by the Home Secretary in regard to matters falling within our reference, should only be made after consultation with the Council. Whether new regulations under the Mines Regulations Acts should be submitted to such a Council in future is a matter outside our reference. **The Advisory Council should consist of men eminent in branches of science connected with the Mining Industry, and representatives of owners, workers and all other interests in the Industry. They should also have local district committees reporting to them, and similarly constituted**

For the purposes covered by our Terms of Reference, **the main duties of the Advisory Council would be:—**

(i) **To consider problems affecting the Nation's mineral resources.**

(ii) **To assist the Mining Department, as required, in negotiations between conflicting interests.**

(iii) **To advise the Mining Department, when required, as to recommendations to be made to the Sanctioning Authority for compulsory Orders.**

(iv) **To advise the Mining Department as to the nature of, and the method of collecting and recording, returns, plans and other information required.**

(v) **To bring to the notice of the Home Secretary specific difficulties which may from time to time arise in the development or working of minerals, with a view to his referring to the Council the investigation and discussion of such difficulties, and their reporting to him, what in their opinion, would be an appropriate solution.**

10. The development of the Nation's mineral resources has, until the present time, depended upon free contract by negotiation between the owner and the intending mineral worker. Apart from the causes of loss, enumerated in paragraph 4, we do not think that this system of free contract has resulted in the loss of any considerable amount of minerals, as both the owner and the mineral worker are, as a rule, concerned to make the best use of all merchantable minerals. But it can hardly be questioned that the development of mineral fields might have proceeded on more scientific and economic lines if there had been in existence some authority, which not only possessed a wide experience in the technical questions involved in any case, but which had made a scientific study of the geological conditions of each mineral area as a whole. Such authority, from the records, information and plans in their possession, could survey the proposed development on broad lines, and point out the best unit of development with due regard to other units and to the field as a whole, and regardless of the accidental boundaries of surface ownership. It sometimes happens that an owner has not control of a sufficiently large area, or has not sufficient foresight to make the best use of his minerals. In such cases we think it would be of great assistance to the Industry to have the advice of the Mining Department and their Advisory Council. But we do not stop at advice. As we think that the Mining Department should have power to intervene to prevent the wasteful working of minerals in a manner contrary to the national interest, so also we think that the Mining Department should be able, before any fresh mines are opened, to obviate the risk of the production of the field as a whole being impaired by initial mistakes.

Both Section 12 of the Metalliferous Mines Regulation Act, 1872, and Section 19 of the Coal Mines Act, 1911, provide that, where any working is commenced for the purpose of opening a new shaft, outlet or seam of any mine, the owner, agent or manager of the mine shall give

* NOTE.—The duties of the Home Office under these Acts would, under our scheme, be carried out by the Mining Department.

notice thereof to the Inspector of the Division "within two months after the commencement." In our opinion this provision is not sufficient to enable the Mining Department to obviate initial mistakes in development. The Notice provided for by these Acts need not be accompanied by the information requisite to enable the Department to form an opinion as to the merits of the proposed method of development, and need not be given until two months after such development has commenced. **We recommend that not less than two months before any working is commenced, the owner, agent or manager of the mine should give notice to the Mining Department of the proposed working; such notice to be accompanied by such information as to the proposed area, boundaries and general method of development in relation to other workings existing or potential in the same mineral field as may from time to time be prescribed by the Mining Department. The duty to give such notice and information should be enforceable by the imposition of adequate penalties.**

The information thus supplied will enable the Mining Department to examine the proposed development, and, if necessary, to advise the mineral owner or lessee, and in many cases we are of opinion that such advice might be of great value. If, in any case, the owner or lessee refused to accept any recommendation made by the Mining Department which the Mining Department considered was essential to prevent the loss of minerals to the Nation, the Mining Department should, after negotiations with the owner or lessee, have power to make an application to the Sanctioning Authority for a compulsory Order of an appropriate character in the manner which we recommend later in this Report.

We rely upon the Advisory Council as one safeguard against ill-judged interference by the Mining Department with the expert discretion of those responsible for the successful conduct of mining enterprise. But, should such a case arise, it should be borne in mind that the Mining Department cannot obtain compulsory powers except through the Sanctioning Authority, who would hear both sides before making an order.

11. One occasional but considerable source of loss to the nation of mineral products is that, in a period of depression or through lack of capital or other reasons, a number of low grade and other mines with high working expenses cease working. Such stoppage may amount to either (a) abandonment, *i.e.*, where there is no intention of future resumption of working; or (b) discontinuance, *i.e.*, stoppage, with the hope or intention of resuming working in the future; and may relate either to a complete mine or to a particular seam or set of seams forming part of a mine. At a later date when conditions in the Industry have altered, it would often be profitable to resume the working of such minerals, but, under existing conditions, it often happens that the information available as to the state of the mine is insufficient to enable such resumption of working to be undertaken with confidence. In our opinion, much of this loss is avoidable. Indeed, sometimes it may be in the national interest that even temporary interruption of working should be avoided.

Section 12 of the Metalliferous Mines Regulation Act, 1872, and Section 19 of the Coal Mines Act, 1911, require that, where there has been an abandonment or discontinuance of working of a shaft outlet or seam of any mine, notice thereof shall be given to the inspector of the district within two months after such abandonment or discontinuance, and in the case of the abandonment (but not the discontinuance of working) or a shaft or seam of any mine, Section 14 of the Metalliferous Mines Regulation Act, 1872, and Section 21 of the Coal Mines Act, 1911, provide that a plan must be deposited within three months after such abandonment.

On this point we have considered the recommendation of the Report of the Department for the Development of Mineral Resources in the United Kingdom,* and concur, in the main, with their observations on the existing regulations as to the returns required upon abandonment. The Report points out (para. 298), and we agree, that, if pumps are withdrawn, there is no possibility of checking the correctness of any statement which it may have been convenient to make at the time of abandonment. We are of opinion that future resumption of working in the case, either of abandonment or discontinuance, will be greatly facilitated, and only rendered possible in some instances, if notice of intention to abandon or discontinue is given at least three months **before** such abandonment or discontinuance, and is, at the same time, in both cases, accompanied by full information in regard to the minerals of which the working is to be abandoned or discontinued. We further think that a plan will not by itself afford sufficient information in either of these cases. The exact nature of the information required will vary according to whether the working is to be abandoned, or only discontinued, and according to whether minerals are metalliferous or not. We think that the particulars of the information to

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* Para. 319 of the Report of the Department for the Development of Mineral Resources in the United Kingdom, which deals only with minerals other than coal and iron, is as follows:—

"Whenever a mine closes down, both surface and underground plans should be deposited with the Mines "Department, and a statement should accompany them, describing:—

(a) "The state of workings at the time of closing down and the reasons for doing so.

(b) "The quantity of water being pumped at the time.

(c) "The nature of the rock in which shafts and drives were made, and information as to whether "heavy timbering in any particular part of the mine was required.

(d) "The character, size and value of any ore bodies visible in the workings.

(e) "Results obtained during the life of the mine in cross-cutting to other veins from the "main workings, in prospecting shafts, surface trenching, etc.

(f) "Points at which underground connections, if any, have been made with neighbouring mines.

(g) "Records of production and methods employed for treating the ore.

"Such particulars would be invaluable to persons contemplating re-opening the mines under altered "conditions."

be supplied should be prescribed by rules to be made by the Mining Department on the advice of the Advisory Council.

We accordingly recommend that—

(a) **where the working of a shaft outlet or seam of any mine is about to be abandoned or discontinued, the owner, agent or manager of the mine should give to the Mining Department at least three months' notice before working is to cease and such notice should state whether abandonment or discontinuance is intended, and the reason therefor.**

(b) **The notice should be accompanied by such plans and other information as shall, from time to time, be required by the Mining Department.**

(c) **The duty to give such notice and information should be enforceable by the imposition of adequate penalties.**

The adoption of this procedure will enable the Mining Department to consider the question whether it is in the national interest that the working of the minerals of which notice of abandonment or discontinuance has been given, should be continued, or that measures should be taken to facilitate future resumption, and if they so decide, to take such steps to secure the working of the minerals or the adoption of such measures as are indicated later in this Report. (See para. 26.)

SECTION II.

Compulsory Orders.

12. While we believe that freedom of contract with its incentive of commercial profit has, in the main, been the best system for developing the mineral resources of the country,* we are quite clear that there are exceptional cases which can only be dealt with by the intervention of the State. We have in paragraph 4 summarised under 14 different heads the causes of minerals being permanently lost, or development impeded owing to the action of owners and otherwise. In such cases it is our opinion that the only effective and satisfactory remedy lies in the power to obtain a compulsory Order.† We therefore recommend that **wherever the best development of the nation's mineral resources is impeded by rights of private property, an application may be made to the Sanctioning Authority to make an appropriate compulsory Order containing such provisions as to compensation and otherwise as may be required to meet the particular case.**

13. We do not contemplate that the Sanctioning Authority would develop any executive policy of their own, or that they would be concerned with the executive policy of the Mining Department. In many of the cases referred to there may be divergent opinions between the Mining Department and the mine owner or his lessee; or between the surface owner and the mineral worker; and it is essential that all such questions should be decided by some authority other than a Government Department. The Sanctioning authority, being a Committee of Parliament, would be well qualified to exercise such powers. We do not anticipate that compulsory Orders would, as a rule, be made by the Sanctioning Authority, unless they were convinced that efforts had been made to effect an arrangement between the parties concerned, and that such efforts had failed. We think it is desirable to emphasise that compulsory Orders which involve interference with private rights would only be made by the Sanctioning

* Note.—As an illustration of the value of private enterprise, we may quote the development of the Nottinghamshire, Derbyshire and Yorkshire coalfields. For many years it was thought that the coal seams in these coalfields either did not continue east under the Permian limestone which extends from the City of Nottingham into the County of Durham, or that the general eastward dip of the strata would carry them to a depth too great for profitable mining. So late indeed as the middle of last century, coal mining was restricted to the region lying west of the Permian limestone. In 1854 the then Duke of Newcastle began to sink two shafts at Shireoaks, some seven miles to the east of any working at that time existing. No bore holes were put down as a preliminary, since in those days boring had never been carried out to any great depth in this country owing to the somewhat primitive nature of boring appliances. Consequently, at the time, this enterprise was a gigantic speculation; but early in 1859 the valuable top hard coal was cut at a depth of 1,530 feet, and proved to be 3 feet 10 inches in thickness. At the present day most of the chief collieries in Nottinghamshire are situated within the outcrop of the Permian limestone.

† Note.—In this connection, we note that on the 13th April, 1918, by Order in Council, the Defence of the Realm Regulations were extended by Regulation 9.GGG, which empowered the Board of Trade, if the Board were of opinion that for the purpose of increasing the supply of coal of any class, it was expedient to work any seam of coal which was in, near or adjacent to any open mines, and was, for the time being, unworked, to authorise any person to take possession of the seam, and get the coal therefrom upon such terms as to compensation, notice and otherwise, as were mentioned in the Order. We understand that though, in fact, only four Orders were made under this Regulation, the effect of the Regulation was to make it much easier to bring about settlements on terms mutually agreed, and that numerous cases were dealt with in this way. There were, however, other cases where, owing to the character of the coal produced, or to shortage of labour, action was not justified as a war measure, although the circumstances were such as would have demanded action in normal times in the national interest. We consider that the principle embodied in this Regulation is sound, especially in so far as it shows that the existence of compulsory powers facilitates settlement by agreement, but we think that procedure by Order in Council or Departmental Order, although justified as an emergency war measure for such a purpose, would not be suitable in normal times of peace.

Authority in cases where it was proved to be in the national interest that such compulsory Orders should be made. We do not attempt any exact definition of what is meant by the expression "national interest," or to detail the considerations which should guide the Sanctioning Authority in making their decisions. It is impossible to foresee now what will be the conditions of the Mining Industry and the requirements of the nation in the future, and any advantage which might possibly be gained by the additional accuracy conferred by a definition would be more than offset by the disadvantage of in any way hampering the discretion of the Sanctioning Authority. We anticipate that such compulsory Orders would be made with due regard to broad considerations of national policy and economic development, and that, while on the one hand private interests would not be allowed to impede the proper development of the national resources, on the other hand, orders would not be made which would have the effect of destroying public confidence in the security of legitimate commercial undertakings, and thereby discouraging the investment of capital or of unduly forcing the development of the industry.* In our opinion the proposal in our First Report, that if a question of policy was involved in any case an appeal should be allowed to Parliament from a decision of the Sanctioning Authority, is sufficient to preserve the control of Parliament. We are also of opinion that the complete discretion as to costs vested in the Sanctioning Authority would discourage unnecessary applications for compulsory Orders, and be a sufficient protection to existing owners and mineral workers.

We think it will be sufficient to recommend in general terms that:—

(i) **Where interference in the national interest with existing rights whether at common law, or contractual, is sought in connection with the getting and working of minerals, the application should, in the first instance, be lodged with the Mining Department, who must be in possession of sufficient information to advise properly.**

(ii) **The Mining Department should try to effect an arrangement between the parties concerned, and if such an arrangement cannot be effected, either of the parties should have the right to apply to the Sanctioning Authority for a compulsory Order.**

(iii) **If the Mining Department are satisfied that minerals are not being worked which, in the national interest, ought to be worked, they should be empowered on their own motion to negotiate an agreement with some mineral worker for getting the minerals in question, and to obtain the consent of other parties affected: and on failure of such negotiations, the Department should be empowered to apply to the Sanctioning Authority for a compulsory Order of an appropriate character, in favour of some mineral worker willing to work.**

14. The recommendations in the last two paragraphs in principle provide the remedy for most of the causes of loss mentioned in paragraph 4. They specifically cover the case of the owner who is unwilling to treat at all, or refuses to deal except on unreasonable terms. But it is perhaps desirable to give an illustration of the type of case in which we anticipate that a compulsory Order would not be made. In some cases mineral workers have obtained control, either by lease or purchase, of a larger area of minerals than they are able to work immediately, in order that their operations may be conducted economically over a considerable period of years, or in order that they may be able to supply without interruption the coal or other minerals required for an industrial enterprise, or for other reasons. We are satisfied that in many such cases the retention of an area for future development is consistent with public policy; indeed, in many such cases it would be contrary to public policy that the whole of an area should be forced into immediate development.

The mere postponement of the date when minerals will be worked is not of itself sufficient to constitute even a *prima facie* case for a compulsory Order. And in general, we are of opinion that, wherever there is an existing worker (by which we mean an individual or company who, whether owner or lessee, is already working, or is prepared to work the minerals in question at some future date), no compulsory Order should be made as against such existing worker, except upon proof that there is a danger of the minerals being permanently lost to the country, or that there will be such delay in development as to prejudice the national interest. Each case must be decided by the Sanctioning Authority in their absolute discretion after consideration of all the aspects of national policy involved.

In all such cases, if an application were made to the Sanctioning Authority by a private individual or company, for a compulsory Order giving the applicant power to work such minerals, the Sanctioning Authority would have to be satisfied not only that the applicant could not obtain reasonable facilities by negotiation with the owners, but that it was in the national interest that the working of the minerals in question should be begun forthwith.

We accordingly recommend that where minerals have been already bought or leased by workers with a view to future development, no application for a compulsory Order with reference to these minerals should be entertained by the Mining Department or by the Sanctioning Authority until they are satisfied that for some definite reason it is in the national interest

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* NOTE.—It will be remembered that in our First Report (para. 33) we did not propose to exclude eminent professional men from the General Panel of the Sanctioning Authority, though we did not think that experts, as such, should be appointed thereto. We were of the opinion that any difficulty likely to be experienced by the Commissioners in dealing with technical matters could adequately be met by the provision enabling the Sanctioning Authority themselves to call as independent witnesses professional experts of high authority on the specific subjects in question, such witnesses to be examined by the Commissioners, and subjected to cross-examination on behalf of parties in open court on any technical matters arising out of the scheme under enquiry.

that a compulsory Order should be made, and that the applicant has made reasonable efforts to obtain satisfactory terms by negotiation.

15. The case referred to in paragraph 4 (iii) is one which occasionally results in minerals being withheld from development. The property in mines under copyhold land is usually in the lord of the manor, but the possession is usually in the copyholder; with the result that (in the absence of a custom to the contrary) neither lord nor copyholder can work the mines without the consent of the other. In such cases the difficulty is often (as in the Midlands and the North of England) adjusted on the grant of a lease, by giving half the rent to the lord and the other half to the copyholder. If, however, either of the parties will not join in the lease, the minerals cannot be worked.* In these respects the position of a customary freeholder is similar to that of a copyholder. The Copyhold Act, 1894, provides (Section 23) that upon an enfranchisement thereunder (whether voluntary or compulsory) the mining rights of the lord or the tenant should not be affected without written consent, and the enactments thereby repealed (Section 82 of the Act of 1841, Section 48 of the Act of 1852, and Section 14 of the Act of 1858) contain very similar provisions. The result is that the various Copyhold Enfranchisement Acts mainly affect surface property only, and that there is a substantial quantum of mines in England and Wales, partly under land which is still copyhold, and partly under land which was formerly copyhold but is now enfranchised, to which these conditions apply. It is to be noted that the Partition Acts do not apply to these cases.

We recommend that **in cases where neither the lord of the manor on the one hand, nor the copyholder or customary freeholder on the other hand, can work minerals without the consent of the other, if one party refuses his consent, the other party should be entitled to apply to the Sanctioning Authority for an Order settling the terms on which the minerals are to be worked.**

16. The instances given in paragraph 4 (iv) are typical cases where the intervention of the Mining Department should be of great value. As a result of the operation of the Enclosure Acts, minerals are sometimes owned in small separate areas by a large number of allottees of waste lands or common fields. In the absence of co-operation among such owners an intending mineral worker is often unable to obtain working rights over a sufficiently large mineral area; or blocks of mineral may be left "land-locked."

Another case is where a mineral field has become vested in several owners entitled as tenants in common. Much of this kind of ownership dates back for a century and a half at least, and took its origin from Partition Deeds under which large tracts of surface land were severed from the mines, the surface being allotted in severalty, while the tenancy in common in the mines was continued. Partition or sale cannot be effected unless the parties agree, or one of such owners initiates proceedings under the Partition Acts. Until such action is taken, an intending mineral worker may find it impossible to come to terms with the owners; and, in any event, the necessary legal proceedings are slow and expensive. In these and similar cases we recommend that **the intending worker should be able to apply to the Mining Department, and if the Mining Department, after negotiation, fail to secure agreement with the owners, the intending mineral worker should be able to apply to the Sanctioning Authority for an appropriate Order.**

17. We have referred in para. 4 (v) to cases in which the mineral owner, while quite willing to grant all reasonable facilities for the working of minerals, is unable to do so owing to some legal disability, either in himself or created by Statute or by the instrument under which he derives ownership. For example, a trustee has no power to grant an option, and a tenant for life for the purposes of the Settled Land Acts is under a similar disability, since in the exercise of his powers under those Acts he is in a position analogous to that of a trustee. Options have, for many years, been frequently adopted in the development of land, and we think that the disability in this respect of trustees and tenants for life might be removed with considerable advantage. It also sometimes, though rarely, happens that a tenant for life cannot utilise the provisions of the Settled Land Acts in order to grant a mining lease, and, consequently, an application to the Court is necessary in order to enable a lease to be granted by the trustees. This procedure entails expense and delay.

Further, some corporate bodies are needlessly hampered in dealing with minerals, *e.g.*, by virtue of Section 5 (2) of the Glebe Lands Act, 1888, the Board of Agriculture cannot approve the sale of mines "which are, or may become, of considerable value"; the Admiralty can only lease Greenwich Hospital mines for a term not exceeding 42 years, while the usual term of a mining lease for a considerable time has been 60 years; by reason of the provisions of the Ecclesiastical Leasing Acts, 1842 and 1850, the consents, not only of the Ecclesiastical Commissioners, but also of the Patron, and, in some cases, of the lord of the manor, are required before the Ecclesiastical Corporation can grant a mining lease.

In all such cases as these (of which the examples quoted above are not intended to be an exhaustive list) we are of opinion that development may be impeded.

We therefore recommend that **specific statutory powers should be given to tenants for life, and to trustees who have power to grant a mining lease, to grant an option for a limited period for taking up a mining lease; any consideration for such option to be treated as capital money.**

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* NOTE.—The Sub-Committee of our Committee which is considering the position of Land Transfer in England and Wales is investigating these and similar cases from the point of view of their terms of reference, which are:—"To consider the present position of Land Transfer in England and Wales, and to advise what action should be taken to facilitate and cheapen the Transfer of Land."

Where under a settlement there is no tenant for life with power to grant mining leases under the Settled Land Acts, the Trustees of the Settlement should be given statutory authority to exercise the powers of a tenant for life in this respect under the Settled Land Acts.

The restrictions on dealing with minerals imposed on the Corporate Bodies which we have mentioned above should be removed by amendment of the Acts to which we have referred.

In general we recommend further that the Sanctioning Authority should over-ride any legal disability which interferes with the grant of leases or other working powers as in their discretion they consider desirable in the national interest.

18. In the case mentioned in paragraph 4 (vi), viz., **where no owner can be traced with a title to minerals which the Mining Department consider should, in the national interest, be worked, we recommend that the Mining Department should make an application to the Sanctioning Authority for an Order vesting the minerals in itself.** The Sanctioning Authority, if satisfied that a prima facie case existed, should give directions as to the advertisement of the Order applied for, and as to the notices to be served on adjoining owners and otherwise. If any claim is made to the minerals, such claim should be heard and settled by the Courts of Law; but if no claim is made or established within the period prescribed in the advertisement, the Sanctioning Authority should make a final Order vesting the minerals in the Mining Department, with power to lease or to work themselves, as the case may be, but subject to such terms as may be necessary to ensure payment in the future of proper compensation to the owner, if he should within such time as may be prescribed, make good his claim.

19. Special remedies are, in our opinion, needed for the loss of minerals in connection with support and barriers (paragraph 4 (vii and viii)), and we deal with this question in Sections iii, iv, and v of this Report.

20. We have considered the question of what action is desirable to meet the difficulty of obtaining wayleaves on reasonable terms. We concur in the conclusion arrived at by the Royal Commission on Mining Royalties in 1893, and the Mining Sub-Committee of the Coal Conservation Committee (1918), "that owners of mineral property "unreasonably debarred from obtaining access to the nearest or most convenient public railway, "canal or port on fair terms, or from obtaining underground easements on fair terms, ought "not to be left without a remedy." **In our opinion, the Sanctioning Authority would be the Authority best adapted to remedy the grievances referred to, and applications should be made to it for compulsory Orders for wayleaves both above and below ground.** The Compensation Tribunal which we have proposed in our Second Report* would be adequate to deal with any question of compensation. The Mining Department before recommending any such compulsory Order would endeavour to induce the parties concerned to make a voluntary arrangement, and the Sanctioning Authority would only make such an Order on evidence that the access or right required could not be obtained at a reasonable cost, and that the Order was in the national interest. We think that such Orders should in appropriate cases be granted to mineral workers as well as mineral owners, and that the Sanctioning Authority should make compulsory Orders giving whatever rights of access may be required in the national interest whether to other premises of the applicant or to highways, canals, railways, or ports. Such an Order should provide for railway connections or sidings, etc., and impose on the Railway Company or other undertakers an obligation to give the necessary traffic facilities, etc.

21. A similar procedure should be followed in regard to accommodation land or other surface rights as in the case of wayleaves. This applies also to any necessary supply of water, clay, sand, etc., or to drainage.

22. In the same way we think that **the Sanctioning Authority would be the Authority best adapated to deal by compulsory Order with cases where there was a possibility of loss to the Nation occasioned by the development of valuable mineral products being prevented or impeded by restrictive covenants.** In our Second Report (on Valuation and Compensation for the purposes of Compulsory Acquisition) we recommend (paragraph 22) that "where pro- "moters acquire land which is subject to outside restrictions on its use, the promoters should "be entitled to use the land free from any such restrictions subject to payment of compensa- "tion to the persons entitled to the benefit of such restrictions if such persons are in fact "damaged by the breach of such restrictions. And even where no application for land is "pending before the Sanctioning Authority either because the land has been acquired by volun- "tary agreement or because no additional land is needed, it should be open to the Sanctioning "Authority to extinguish or modify a restrictive covenant upon proper terms as to compensation "or otherwise whenever they are of opinion that it is in the public interest that such covenant "should be so extinguished or modified." In all such cases the Sanctioning Authority should make an appropriate Order on being satisfied that it is in the national interest that such an Order should be made, and that efforts to prevent the anticipated loss to the Nation by agreement have failed, and such Order should be made on the application either of any party interested or of the Mining Department. As in the case of land acquired by promoters which is subject to outside restrictions on its use, the persons entitled to the benefit of such restrictive covenants would be entitled to compensation if such persons are in fact damnified by the extinction or modification of such restrictive covenants. The amount of such com-

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*Second Report of the Committee dealing with the Law and Practice relating to the Acquisition and Valuation of Land for Public Purposes, Cd. 9229.

pensation in either case would be assessed by the Compensation Tribunal which we have proposed in our Second Report; the panel of assessors being strengthened by the inclusion of men with the necessary technical knowledge.

23. We have referred, in paragraph 4 (xii) to cases where minerals may be lost to the nation in consequence of unforeseen circumstances, or the conditions imposed on a mining lessee by the terms of his lease, unless some modification or readjustment is made in the terms of the original bargain between the parties concerned. As the Sanctioning Authority will be a committee of Parliament, they would clearly have power to modify or vary the terms of any contract, such as a lease, by compulsory Order on any terms which they may think fit. But we think it desirable to refer to this type of case for the purpose of illustrating some of the considerations which we anticipate would guide the Sanctioning Authority in granting or refusing to grant such a compulsory Order.

We do not consider that the mere fact that a mining lessee had made a bad bargain when taking up his lease, should be sufficient ground for making an Order varying its terms. But it may be that the terms of a mining lease do, in fact, unduly hamper the development of the minerals, and that they ought, in the national interest, to be modified. Again, cases may arise where, though the terms imposed by a mining lease or the rent and royalties reserved, at the time they were imposed were not such as were calculated to hamper development, unforeseen circumstances have arisen which render them unduly restrictive. In such an event one consequence may be that the whole or a part of a mine may prove unremunerative, and the lessee may be tempted to close down altogether or to work only the easier and more remunerative seams, thereby passing seams which the Mining Department might consider should, in the national interest, be worked in order to avoid the loss of the minerals to the nation.

If the terms of a mining lease clearly hamper development of the minerals, whether such terms were unduly restrictive at the time the bargain was made, or have become so owing to circumstances which were not contemplated by the parties in the first instance, with the result that there is a danger of minerals being lost to the nation, it is clearly in the national interest that the Sanctioning Authority should revise the terms of the bargain, where it is not, or, for some reason, cannot be, done by consent.

24. The case of the productivity of a mineral field or of some of the mining concerns in it being impaired through the lay-out, whether of the whole field, or of the individual concerns, not having been planned in advance with an eye solely to making the best use of minerals from a technical point of view (see paragraph 4 (xiii)) is one of importance. The difficulty is due to the chances of surface ownership, as the configuration and extent of the mineral royalties leased are, under the system of private ownership, as a rule, determined by the surface boundaries of estates, and by the willingness or unwillingness of owners to part with their minerals.

Where a new mineral field has been discovered, or the field of operations of a particular concern has not been opened out, the procedure we advise in paragraph 10 will, in our opinion, meet the necessities of the case effectively. On the other hand, where the mineral field has been generally opened out, and the minerals are, for the most part, already in lease to different mining companies, there should only be intervention by the Mining Department if they are satisfied that the national interest necessitates interference.

In such a case **the Mining Department should, in the first instance, approach the existing mineral workers or worker with a view to effecting the necessary re-arrangement voluntarily; but they should, if necessary, have power to apply to the Sanctioning Authority for a compulsory Order to carry the necessary re-arrangement into effect, and to vest the interests of the existing mineral workers or worker in some other mineral workers or worker willing to work the minerals in accordance with the scheme of rearrangement. In the last resort the Mining Department should have power to apply for an Order vesting the interests of the existing mineral workers or worker in themselves on proper terms as to compensation (if any), with power for the Mining Department themselves to work the mines in question for such a period as may, from time to time, be prescribed by the Sanctioning Authority.**

25. There are certain cases where an existing mineral worker may, through inefficiency or for some other reason, cause the loss of minerals which, from the national point of view, ought to be gotten; or even so mismanage his whole concern as to prejudice the national interest. (See paragraph 4 (xiv)).

In such a case **the Mining Department should, in the first instance, endeavour by negotiation with the mineral worker to obtain improved methods. If such negotiation should fail to effect the required result, the Mining Department should be able to apply to the Sanctioning Authority for a compulsory Order to transfer the interest of the existing mineral worker to some other mineral worker willing to undertake the working. In the last resort the Mining Department should have power to apply for an Order vesting the interest of the mineral worker in themselves, with power to work the mine themselves in the manner indicated in the preceding paragraph.** Whether, in such a case, the Mining Department should be authorised themselves to work, is a question of national policy for the Sanctioning Authority or Parliament themselves to decide. But we do not think that the Mining Department should be encouraged to make experiments; they should only be allowed themselves to work where there is no other means existing for getting a particular mine worked which, in the national interest, ought to be worked.

26. Cases may also arise where existing mines are about to cease working which the Mining Department are of opinion should, in the national interest, continue to be worked. In such cases **the Mining Department should endeavour to find a worker willing to undertake the work-**

ing of the mine before the existing worker ceases working. On failure to find such a worker, we are of opinion that the Mining Department should be able to apply to the Sanctioning Authority for an Order authorising the Mining Department to continue the working for such a period as may, from time to time, be prescribed by the Sanctioning Authority. The Mining Department would, under such Order, appoint a manager to work the mine in question. As soon as the mineral worker willing to work the mine has been found, the Mining Department should apply to the Sanctioning Authority for an Order vesting in the intending worker the interest of the mineral worker who has ceased working, or arrange for a fresh lease to be granted to the former by the mineral owner. During such period as they were, under the Order of the Sanctioning Authority, responsible for the working of the mine, the Mining Department would have to make the necessary financial arrangements, subject to Parliamentary and Treasury control, to enable them to exercise such functions.

It may be that other occasions may also arise where similar powers should be given to the Mining Department. We think such cases should be left to be dealt with by the Sanctioning Authority in their discretion.

27. As we recommend earlier in this Report (paragraph 5) all compulsory Orders relating to the acquisition or leasing of mining properties should be made solely by the Sanctioning Authority. In the event of an applicant failing to obtain from the Mining Department a recommendation in the terms of his application, he would be free to make his application direct to the Sanctioning Authority, but in such a case we anticipate that the applicant would be required to prove a strong case for a compulsory Order, and that if the Sanctioning Authority was of opinion that the Mining Department were right in refusing to recommend the application, it would order the applicant to pay the costs.

In most cases the rights of private owners would not be interfered with until a compulsory Order of the Sanctioning Authority had actually been made. But we think that when an application for a compulsory Order has been lodged, **the Sanctioning Authority should, if they think fit, make an interim Order restraining all dealings with the surface or minerals affected pending the hearing of the application.** We think that it might be necessary for the Sanctioning Authority to exercise such a power in urgent cases, *e.g.*, where the applicant anticipated that the owner of the minerals or the surface in question was about to dispose of or deal with his property in a manner inconsistent with the order applied for, or where the Mining Department was applying for power to take over minerals in respect of which a notice of abandonment or discontinuance of working had been given.

We further think that, **in urgent cases, where damage is anticipated, as, for instance, by an inrush of water or subsidence of the surface it should be open to the Mining Department, or any party liable to be affected, to apply to the Sanctioning Authority for an Order authorising the Mining Department to take executive action, even where no application to the Sanctioning Authority is pending.**

SECTION III.

The Law of Support.

Minerals Left for Support. Proposed Insurance Fund.

28. It is a matter of common knowledge that considerable areas of minerals, and especially of coal, are at present rendered unworkable where the owner of the surface or adjoining property has an absolute right to support, whether vertical or lateral, and refuses to waive or modify it on reasonable terms.

It is not possible to estimate with any degree of accuracy the amount of minerals which are in this way lost to the nation, but the total amount is admittedly very large, and while we recognise that the value or character of the buildings on the surface often renders it of greater importance that they should be preserved than that the minerals below the surface should be worked, and consequently that in these cases the minerals must be left for support, we are satisfied that there remain considerable areas which could be worked if a scheme could be devised which would secure the interests of the surface owner.

The Royal Commission on Housing in Scotland after considering the hardship caused by damage to house property through subsidence due to mineral workings recommended (paragraphs 1024-1038 of the Report):—

(a) That there is ground for the legislature interfering to reinstate or preserve the common law claim to damages for subsidence, subject to certain reservations and provisos.

(b) That the surface owner should be entitled to relief from the mineral owner for any compensation for which he is found liable in respect of subsidence due to the working of minerals.

(c) That in mineral leases running at the time of the new legislation, the compensation paid in respect of subsidence (occurring subsequent to the legislation) should be borne as follows:—(i) Where the surface owner is different from the mineral owner, one-third by each owner and one-third by the proprietor of the surface buildings, and (ii) where the surface owner and the mineral owner is the same individual, two-thirds by that owner, and one-third by the proprietor of the surface buildings.

We have carefully considered these recommendations, but have come to the conclusion that, while they would afford relief to the proprietor of the buildings on the surface from the existing hardship, they would not effect complete justice, and, moreover, would not, in all cases, secure the object which by reason of our terms of reference we have primarily in view, viz., to facilitate the working of minerals which ought in the national interest to be worked, subject to proper protection of all parties likely to be prejudicially affected by such working. In particular, we fear that the result would be to discourage owners of the surface or of the minerals from making land available for building purposes, or from working the minerals. In many cases, where the mining lessee is liable for damage caused to the surface, such liability has been taken into account in fixing the rent or royalties payable by him, and we do not think it would be just that any proportion of the cost of repairing damage caused by subsidence should, in such cases, fall upon the owner or lessee of the surface. Other cases exist, such as a cotton mill in a mining district, where it is essential that support should be left, because of the great damage which would be caused to the machinery by the slightest displacement. We have therefore considered what alternative solution of the difficulty can be found.

29. In most cases the mineral worker would be willing to work the minerals, and to undertake responsibility for all damage caused by working if he could estimate with accuracy the maximum amount of damage which might be caused, and could come to terms with the surface or adjoining owner.

The right of support is not confined to the case of the private owner. A public highway set out under an Enclosure Act is entitled to support. So also are sewers constructed under the Public Health Acts and gas mains and pipes and water pipes laid under statutory authority. But under the existing law the owner who has a right of support is protected, not merely by his right to damages, but by his right to an injunction, and in practice an injunction is usually granted on mere proof that substantial subsidence will be caused, without proof that subsidence will be accompanied by appreciable damage. The surface or adjoining owner's right to an injunction exists even in cases where he could adequately be compensated without enforcing his strict rights, and the minerals in question are thus lost to the nation. But even where the mineral worker has the right to let down the surface subject to payment of compensation, he may be afraid to do so. In some cases, apart from the probable damage from subsidence which the mineral worker can estimate, and which he may be willing to undertake, there exists a more or less remote possibility of very great damage which would absorb all profit on the working. This liability indeed in practice has sometimes amounted to a figure which only a wealthy corporation could pay. In such cases the mineral worker is not always willing to undertake this remote but possible risk, nor are surface owners, where their consent is necessary, willing to allow the risk to be undertaken unless the mineral worker is financially very strong.

30. We do not think that it is in the national interest that the question whether minerals should be worked or not should always be left to the decision of the surface or adjoining owner and the mineral worker. In many cases one or other of them may take a mistaken view of the risk involved, and if the possible risk of great pecuniary liability, to which we have referred, were provided for, the mineral worker would be willing to work. The surface or adjoining owner, if protected by the provision of compensation for damage, should, in many cases, no longer have a right to obtain an injunction to prohibit the working. We are not prepared to recommend the substitution in all cases of a right to compensation for the right to an injunction. Nor do we think that it should be left to the Courts of Law to decide whether subsidence of the surface should be permitted or not. The decision must in each case depend on a balancing of the advantages to the nation on the one hand of the minerals being gotten, and on the other of damage to the surface being prevented. But this comparison is exactly what the Sanctioning Authority we have recommended are well fitted to make. We therefore think that in each case the Sanctioning Authority should determine whether the payment of compensation to the surface or adjoining owner for damage done would be sufficient, and whether it is in the national interest that the minerals should be worked or not.

31. In any case in which the Sanctioning Authority determines that minerals should be worked, notwithstanding the right of the surface or adjoining owner to support, provision must be made for the fullest protection of the surface owner. **That protection in our opinion can only be secured by a scheme of insurance under State supervision and control.** We understand that, from time to time, attempts have been made to establish insurance schemes for such purposes in various localities. Examples have also been supplied to us of mining leases which contain provision for payment by the lessee to the lessor in addition to royalties or dead rent of a certain sum per acre of the minerals demised or gotten in consideration of the lessee being indemnified against liability for surface damage. But such a provision is not extensively adopted in areas where the surface is built on, as in such areas it is difficult to arrange suitable terms. The owner of a small building on the surface is not usually prepared to accept his proportion of the payment to be made by the mining lessee, as covering the risk of damage which may amount to a much greater sum. Such schemes, moreover, have been on too small a scale to provide a fund out of which any very large claim could be met, and to provide for such an eventuality a successful scheme would have to embrace a large number of cases. The risk of large claims having to be paid is, in our opinion, small if certain methods of working, packing and otherwise are observed. The amount of damage to the surface caused by subsidence depends to a very great extent on the method of working. It has been proved, for instance, in many cases, that the damage will be small if the whole of a seam is worked

rapidly and continuously, as the surface will then sink uniformly, and the buildings, in most cases, will not suffer. On the other hand, if an area in the centre of a working is left unworked, the surface of this area is subjected to a great strain when the strata over the remainder of the working subsides, and damage is almost certain to occur. For these reasons, we think it is essential that in all cases of compulsory Orders, the appropriate general conditions of working should be laid down, and should be observed by the mineral worker.

32. We have considered the possibility of further reducing damage by subsidence by the system of hydraulic packing as practised at the Dalzell and Broomside Colliery, at the Kaiser Mine in the Ruhr district in Germany, and at collieries in Silesia, Saxony, Poland, and Belgium. We do not think that the experience of hydraulic packing, which has been gained in this country up to the present day, justifies its adoption under compulsory Order; as, while the system has proved successful in preventing or minimising subsidence in some of the foreign mines to which we have referred, the cost of obtaining and dealing with the packing material has, in this country so far proved prohibitive. We consider, however, that this system should be the subject of further experiment and research, and we are not without hope that conditions may be found which would render the system commercially possible in this country, in which case the system could, in proper cases, be prescribed with advantage.

33. As mentioned in paragraph 31 we think that an insurance scheme to cover the risk of surface damage is a necessary corollary of a system of compulsory Orders, authorising the working of minerals which may cause subsidence by the removal of support; even although we recognise that no such Order would be made except upon evidence that the damage likely to result was not excessive in comparison with the value of the minerals so released. But while we think that the risk of a large claim having to be met is, in the ordinary case, small, if proper methods of working are observed by the mineral worker, there is a possibility of a large claim having to be met shortly after the insurance scheme has been started, and before the actual risk has been ascertained, and a reserve fund built up. We, therefore, think it is essential that the Insurance Fund should not be a commercial venture, but that the State should control the fund, and guarantee its solvency. We think that, inasmuch as all compulsory Orders for the working of the minerals in question are to be made in the interests of the nation as a whole, the State may fairly be asked to undertake this possible risk. We do not anticipate that the State would actually have to meet any deficiency on account of this guarantee, nor do we think that the State should make any profit out of the scheme, as, subject to the gradual building up of an adequate reserve fund, the premiums should be adjusted to cover the actual risk undertaken. We also consider it essential that the surface owner who suffers damage caused by the working of minerals under a compulsory Order should have a direct and complete right of indemnity from the Insurance Fund, leaving the Insurance Fund to recover from the mineral worker the whole or part of the sum paid to the surface owner if the damage was wholly or partly caused by the negligence of the mineral worker, or by his failure to comply with the conditions laid down by the Sanctioning Authority as to the methods to be observed in working the minerals. On the other hand, if the mineral worker has not been negligent, and has observed the conditions laid down by the Sanctioning Authority, his liability should be limited to the amount of his contribution to the Insurance Fund. It is evident to us from the enquiries which we have made that it will be impossible to fix a flat rate of contribution to be applied to all cases, as the risk will vary materially according to local circumstances, and the contribution to be paid must, in each case be fixed after consideration of all the circumstances affecting the risk.

34. We have, therefore, considered on what terms such an insurance fund could be established; to be managed by the Mining Department, and guaranteed by the State, and we make the following recommendations:—

(a) **That an Insurance Fund should be created, out of which compensation can be paid for damage to property which but for a compulsory Order of the Sanctioning Authority, would have enjoyed a right of support.**

(b) **Whenever the Sanctioning Authority makes an Order for the compulsory working of any minerals, notwithstanding the right of the owner of the surface or adjoining property, whether above or below ground, to support, the Sanctioning Authority should, in proper cases, make it a condition of such Order that the mineral worker shall contribute to the Insurance Fund.**

(c) **Upon the granting of any such compulsory Order, the legal right of the owner of such surface or adjoining property to obtain an injunction to prohibit the working of the minerals authorised to be worked by such compulsory Order (hereinafter referred to as "the released minerals") would be suspended so long as the working of the released minerals was in accordance with the Order of the Sanctioning Authority. But such owner would be entitled to recover damages for injury caused by the working of the released minerals from the Insurance Fund.**

(d) **The Sanctioning Authority should, in such compulsory Order, fix the amounts to be contributed to the Insurance Fund by the mineral worker having regard (i) to the estimated damage to the surface or adjoining property, which may be caused by the working of the released minerals; and (ii) such other circumstances as the Sanctioning Authority may, in their discretion, consider material. Such contribution may be calculated either on the basis of a rate per acre, or per ton of the minerals worked, or a fixed periodical payment, or in a combination of both methods, as the Sanctioning**

Authority may determine.* On payment of, or giving security for, the contribution so assessed, the mineral worker should, subject to paragraph (f) hereof, have complete immunity from all damages and costs in respect of damage done to the surface or adjoining property by the working of the released minerals.

(e) If it is proved to the Sanctioning Authority by the mineral worker that any person or persons are, or will be, financially benefited by the Order, the Sanctioning Authority could apportion the contribution fixed by the Sanctioning Authority between the mineral worker and the mineral owner, or such other person or persons having regard to the legal rights of all parties benefited or affected, and the benefit or estimated benefit to accrue to the mineral worker, and such other person or persons respectively.

(f) With a view to minimising surface damage, the Sanctioning Authority should, in such Order, impose such general conditions (if any) of working, pumping, packing, stowing and otherwise to be observed in working the released minerals, as having regard to cost and other circumstances, the Sanctioning Authority may think reasonable, and failure to observe such conditions should render the mineral worker liable to refund to the Insurance Fund any compensation payable out of the Insurance Fund for damage caused by such failure. In order to enforce the observance of such conditions, the Sanctioning Authority should make provision for the payment of suitable fines, or, if in their opinion expedient, prohibit further working of the released minerals by the defaulter.

(g) It should be the duty of the Mining Department, by their inspectors, to inspect and report upon the due performance by the mineral worker of any such conditions, and to take such proceedings as may be necessary to enforce the same. In the event of any claim being made for damages resultant upon the working of the released minerals, it should be the duty of the mineral worker to give prompt notice to the Mining Department, and to furnish such evidence, and to give such assistance, in dealing with the claim as may reasonably be required by the Mining Department. The Inspectors of the Mining Department should also have power from time to time to inspect the surface over the released minerals.

(h) All contributions should be paid to and be recoverable by the Mining Department, who should manage the Insurance Fund, and out of such Fund deal with and settle all claims for compensation for damage to the surface or adjoining property caused by the working of the released minerals.

(i) The sufficiency of the Insurance Fund to meet all claims should be guaranteed by the State.

(j) Where any claim is adjudicated by the Court, all parties interested should be before the Court, and the Court should have the power and the duty of adjudicating on all questions arising out of the claim, including any claim made by the Insurance Fund against the mineral worker on the ground that he had caused the damage by reason of his failure to carry out any requirements of the Sanctioning Authority.

(k) The Mining Department could insure any person against loss or liability for damage by voluntary agreement on payment of such premium, and upon such terms and conditions as the Mining Department may, from time to time, determine.

(l) With a view to encouraging careful working by the mineral worker, the Mining Department could, from time to time, reduce or grant a rebate on the contribution payable by the mineral worker, if the Mining Department are of opinion that the mineral worker has by greater care, or by improved methods in working, or otherwise, reduced, or will in future reduce, the risk estimated by the Sanctioning Authority when fixing the contribution.

35. It has been urged upon us that the damage which may be caused by subsidence depends, to a great extent, on the nature of the development of the surface, and that in the same way as the Sanctioning Authority can exercise control over the methods of working the minerals when making a compulsory Order, so also they should have control over the user of the surface above such minerals. We are agreed that there is great force in this contention. It is probable that in most mining districts the net additional wealth capable of being produced by bringing to bank the minerals below the surface is very much greater than the loss liable to be caused by the damage to the buildings on the surface which may result from working the mines. But it would be the duty of the Sanctioning Authority to determine such questions in each case, and to decide whether it was in the national interest that the minerals should be developed, or the surface supported; and we are agreed that if the Sanctioning Authority are of opinion that the minerals in a given area should be developed, they should also take steps to minimise the damage likely to result from the working of such minerals by controlling, whether temporarily or permanently, the user and development of the surface. We recognise that any such Order involves interference with existing contracts, and that compensation for such interference to the parties affected must be provided by the Order of the Sanctioning Authority.

* The Sanctioning Authority would, in such Order, make any subsidiary conditions which may be considered advisable. For instance, they might direct that all claims in respect of any surface or adjoining property not exceeding, in any specified period, an amount to be specified in such Order, or that the first £10 or other figure to be specified of each claim allowed, shall be repaid to the Insurance Fund, either by the mineral worker, or by the owner of the surface or adjoining property, if he is also the owner of the released minerals.

We therefore recommend that—

(i) Whenever an application is made to the Sanctioning Authority for the compulsory working of any minerals, the Sanctioning Authority should consider the most economical method of dealing with the case, and the relative values to the nation of the working of such minerals, and of the existing and prospective user of the surface, and in any case where the national interest so requires should, notwithstanding any existing contracts or common law rights, make such Orders restricting or governing the user and development of the surface over such minerals, and of adjacent mines as may be calculated to minimise the damage caused by the working of such minerals on payment to the owners of the surface, and any other jersons affected, of proper compensation by the mineral worker and any other persons benefited by the Order.

(ii) Failure to comply with the conditions laid down in the Order should affect the right to compensation from the insurance fund.

(iii) The Sanctioning Authority should also consider and decide the period within which the working of minerals under a compulsory Order must be completed. The cessation of working would, of course, not prejudice claims for damage happening thereafter as a result of such working.

(iv) The Mining Department should be consulted by the Local Government Board before any Town Planning Scheme in a mining district is approved.

36. We are agreed that, just as there are cases in which the mineral worker should be granted a compulsory Order giving him a right to work minerals, notwithstanding the right of the surface owner to support, so there are cases where the owner of the surface, in view of the relative values to the nation of the minerals below the surface and of the buildings on the surface, or of the proposed development of the surface, should be given a right of support, notwithstanding that he does not enjoy any such existing right. In many cases the owner who enjoys no right of support would be adequately protected if he received compensation for any damage caused by working, and we have provided for such cases in the insurance scheme which we have recommended by the proposal that such owners should be able to insure voluntarily. There are, however, cases such as that of a surface owner who has erected, or who proposes to erect, a cotton mill, where compensation would not be a sufficient protection, because great damage to the machinery in a mill would, as we have already pointed out, be caused by the slightest displacement, and an absolute right of support prohibiting the working of the subjacent and adjacent minerals is essential to the surface owner. In such cases as this an Order from the Sanctioning Authority would be required, and the compensation to which the mineral owner and mineral worker would be entitled should be provided for by the Order of the Sanctioning Authority.

We have also considered that an Order prohibiting the working of the minerals in question may injure the owners of adjacent surface properties, because the effect of the Order in many cases would be to leave the property in question supported while the surrounding property was subsiding, and this has, in practice, been proved seriously to increase the damage to the surrounding property. We think, therefore, that such adjacent owners, as well as the mineral owner and mineral worker, should either receive compensation, or should be protected by means of the insurance fund which we recommend.

We therefore recommend that it should be competent to any surface owner who has no right of support, or an inadequate right of support, to apply to the Sanctioning Authority for an Order giving such owner such right of support as may be reasonable having regard to the nature and extent of the support required and the method of working the minerals, and on such terms as the Sanctioning Authority may determine. In making any such Order the Sanctioning Authority should take into consideration:—

(a) The payment of compensation to all parties interested in the minerals left for support.

(b) The payment of compensation to, or the protection by means of insurance of, any other owner of adjoining property, whether on or below the surface, who may be damaged by minerals being left for support.

37. Our proposals as to insurance against damage to surface property by subsidence are intended, beyond more obvious purposes, to lead to results of great practical importance. Assurance of safety to buildings, or of adequate compensation in case of injury through subsidence, would, we think, do much to encourage improvements in the housing conditions of the mining community.* We anticipate that if our recommendations are adopted, capital will be provided more readily than at present for the erection in mining districts of substantial and hygienic buildings.

A further advantage, which would result from our proposals, is that the establishment in mining localities of other industries dependent on a convenient and constant coal supply, or the by-products of the coal industry, would be encouraged by the increased measure of security which would be obtained for factories and plant.

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*See the Report of the Royal Commission on Housing in Scotland (Cd. 8731), paras. 1012-1018.

SECTION IV.

Law of Support. Howley Park Judgment.

38. A large amount of coal is left unworked for the support of railways and other public works under the provisions of the Railway Clauses Acts, the Waterworks Clauses Acts, and of Private Acts which incorporate these Acts. The rights of railways and canals constructed before the date of the Railway Clauses Consolidation Act, 1845, to support from minerals are governed by the various Acts under which such railways and canals were incorporated, and such rights differ in material respects from the provisions of the Railway Clauses Consolidation Act, 1845, referred to later. A typical case is that of the London and North Western Railway Company, and we have set out in Appendix I. a statement which has been supplied to us of the rights of support enjoyed by this company. Moreover, although all such railways and many such canals have been amalgamated with railways constructed since the Act of 1845 the rights of support depend upon the provisions of the original Act of incorporation, so that many of the existing railway companies which represent an amalgamation of several companies incorporated at different dates, some before and some after the Act of 1845, enjoy different rights of support on different sections of their line.

The rights of support of railway companies constructed since the Act of 1845 are governed by Sections 77 to 84 of the Act, which comprise what has come to be known as the Code. A very important decision as to the minerals covered by this Code was recently given by the House of Lords in what is known as the Howley Park Case.* The substance of the Code and of the effect of the Howley Park Judgment is very fully given in the Report of the Mining Sub-Committee of the Coal Conservation Committee, and it is sufficient for the purpose of this report to summarise the result of that decision. In brief it may be stated that (with the exception of certain cases not affected by the Railway Clauses Acts) whereas litigation prior to the Howley Park Case related to minerals within the area of 40 yards prescribed by the Code which the railway companies have to purchase if the mineral owner or lessee desires to work, the result of that decision was to lay down that the Code has no application outside the prescribed distance, and that the railway companies are in the same position as other land-owners in regard to lateral support from mine owners outside that distance, without making compensation.†

39. In 1845 it was the intention of Parliament that railways and similar undertakings should not interfere with the getting of minerals unless they paid for the minerals.

Much less was known then than now about the effects of mining on the surface. There was then almost a common belief that artificial support introduced into a mine would effectually prevent subsidence of the surface. The situation has been completely altered by deeper mining which greatly extends the lateral distance at which the removal of minerals may affect the surface. There is little doubt that in fixing a limit of 40 yards from the railway on each side as the area in which the railway company was to pay for the mineral support which it required, Parliament considered that an ample margin had been allowed, and it cannot then have been contemplated that the result of the Code would, in many cases, be to confer on the railway company an absolute right to stop the working of minerals outside the 40 yards limit, without paying for them under the Code.

From the passing of the Act in 1845 to the date of the Howley Park Judgment in 1913, it was a common belief both among railway companies and among mine owners that the mineral worker could work minerals outside the 40 yards limit without any liability. When the extraction of minerals caused damage to a railway, the railway company made good such damage at its own expense. The Howley Park Judgment, therefore, completely reversed the previous practice.

Its immediate and inevitable result was to sterilise all minerals lying outside the 40 yards limit, but within the distance at which, having regard to their depth, the dip of the strata, faults and other geological conditions, subsidence caused by their excavation might affect the railway. The only way of avoiding such loss was for the railway companies to permit the minerals to be worked by voluntary arrangement on terms. Fortunately the railway companies have realised that such arrangements were advisable from the point of view of both parties, and many agreements of the kind have been made.

40. At an early period of our investigations, certain members of our committee representing the railway companies and mining interests concerned in this question, suggested the possibility that negotiation between the parties principally affected might result in a settlement of general application being found. With our approval these members proceeded to carry out this suggestion, and, in fact, representatives of the Mining Association of Great Britain, and the Railway Companies' Association have considered the question at length, and these representatives have arrived at heads of a settlement for England and Wales which are set out in the second appendix.

We have considered the proposed arrangement from the point of view of our terms of reference. We do not consider it to be within the scope of our enquiry to weigh the merits of

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* Howley Park Coal and Cannel Co. v. London & North Western Railway (1913) A.C.11.

* NOTE.—It is possible that in past years—before the Howley Park Decision was given in the House of Lords—some owners may have entered into agreements with Railway Companies in regard to coal outside the 40 yards line. Such agreements would not be affected by the proposed arrangement referred to below.

the compromise which is embodied in this proposal, except so far as it affects the nation's interests. In our opinion, the effect of the Howley Park Judgment, which was not anticipated by some of the mineral interests affected, has been to produce a condition which is prejudicial to the interests of all parties concerned. The result has, in our opinion, undoubtedly been to hamper, and even in some cases to prevent, the development of minerals which could, and in the national interest ought, to be worked. We think that the nation cannot remain indifferent to such a result, and that it is imperative that some solution of the difficulty should be found. We believe that such a solution can be found in a compromise of the conflicting interests involved, provided that such a compromise does not prejudicially affect the interest of the nation in securing the due development of its mineral resources. We do not think that the proposed arrangement is in any way contrary to the best interests of the nation, and, on the contrary, we are of opinion that the effect of such an arrangement will be to set free minerals which, under the existing conditions, are in danger of remaining unworked.

It must be remembered that this proposed arrangement embodies a compromise arrived at, after considerable negotiation, between parties whose interests were difficult to reconcile, and we think it is improbable that any other solution would be suggested which would be more likely to meet with the approval of the parties principally affected.

The royalty owners who are affected by the proposed arrangement were not consulted by the representatives of the railway companies and colliery proprietors who agreed the terms of the proposed arrangement. It is to be observed that the proposed arrangement provides that the royalty owners should bear one-third of the amount to be paid to the railway companies as a contribution to the cost of making good any damage caused by the working. We express no opinion as to whether this proposal will be satisfactory to the royalty owners, and we think it is essential that, before the proposed arrangement is confirmed by the legislature, terms satisfactory both to the royalty owners and to the colliery proprietors *inter se* should be agreed.

We therefore recommend **that, subject to such agreement being obtained, the Legislature should give statutory effect to the principles embodied in the proposed arrangement.**

41. It is to be observed that this proposed arrangement is restricted to existing railways in England and Wales governed by the Railway Clauses Consolidation Act, 1845, and to which the 40 yards limit applies, and, therefore, does not apply to railways to be authorised in the future, nor to railways or sections of railways constructed prior to the Act of 1845, nor to any railways in Scotland. Nor does it apply to waterworks constructed under the Waterworks Clauses Consolidation Act, 1847, nor to various other undertakings to which the Code of the Railways or Waterworks Clauses Acts has been applied in the special Acts authorising such undertakings. A fortiori, it does not apply to any statutory undertaking which is not subject to the Code. Such undertakings, however, though outside the scope of this proposed arrangement, are affected by similar considerations. We do not feel that it is competent for us to recommend legislative application of the proposal to these cases, inasmuch as any similar compromise affecting these cases can only be satisfactory to the interests affected, if made after negotation between such interests.

We recommend, therefore, **that representatives of these interests should be summoned to confer with a view to making an agreement, and that if an agreement, consistent with the national interest, can be reached the legislature should give statutory effect to it also.**

If, however, no agreement can be reached by negotiation between such interests, we do not think that a statutory solution of the question, similar to the arrangement proposed by the English and Welsh Railways and colliery owners, should be imposed on such interests against their will, as we consider that any such solution, being essentially a compromise, can only be satisfactory if it is the subject of mutual agreement. In such an event, existing statutory provisions (if any) would continue to apply, but any railway or other undertaking, or any mineral worker who was dissatisfied, would be free to make an application to the Sanctioning Authority, which could make an appropriate Order in accordance with the general recommendations we have made in this Report, over-riding any statutory provisions and any rights conferred by judicial decisions, such as the Howley Park Judgment, or otherwise. But we anticipate that in such a case the Mining Department would have due regard to the principle embodied in the arrangement set out in Appendix II., and that in the result the advice which they would offer to the Sanctioning Authority would probably, in many cases, be that an arrangement should be effected similar to the arrangement set out in Appendix II.

We summarise our recommendations for dealing with the support of statutory undertakings as follows:—

(1) Where an agreement generally acceptable to the particular interests concerned, and consistent with the national interest, can be effected, statutory effect should be given to it.

(2) In so advising we do not intend to take from the Sanctioning Authority power in a proper case to make a special Order departing from the terms of such a statutory agreement, nor from the Mining Department the duty of watching in the national interest the working of such statutory agreements, and recommending to the Sanctioning Authority such a special Order.

(3) Where such statutory agreements are not effected our general procedure should be followed.

SECTION V.

Barriers.

42. Barriers in metalliferous mines do not lead to any serious loss of minerals. The general recommendations we have made are, in our opinion, a sufficient preventative of unnecessary loss in their case. But in coal mining the quantity of coal left in barriers is very great.

No accurate figures appear to be available as to the quantity of coal now left in underground barriers. The Royal Commission on Coal Supplies (1903/5) arrived at a figure of 9,500 million tons as the approximate quantity of coal left for the support of the surface and in barriers, but they did not divide this quantity between these two causes of loss. The Coal Conservation Committee (1916/18), in reviewing these figures, placed the probable quantity of coal left in barriers as between 3,500 and 4,000 million tons, and point out that even if but a small percentage of this quantity can be worked, considerable saving of coal can be effected.

Such barriers are left, as a rule, for various purposes, such as—

(i) Against water, gas, or underground fires,

(ii) At the boundary of the "take," *i.e.*, to divide one colliery from another.

In regard to boundary barriers we think that our general recommendations will suffice. It is mainly in the case of water barriers that the special problem arises.

43. We have considered to what extent the machinery which we have suggested for the prevention of minerals being left unnecessarily for the support of the surface can be made applicable to the case of mineral barriers.

The problem of the working of barriers differs from that of the working of minerals left for the support of buildings or surface structures in one main essential, *viz.*, that in the working of a barrier the damage which may result from its removal cannot be entirely gauged from the working of the particular barrier in question, but is contingent upon whether other barriers are left or worked—it may be over a considerable area of the mineral field—whereas, in the case of minerals left for the support of a surface structure, the damage likely to result will be caused by the working of a definite area of minerals, and its probable effect on the surface of the working can be approximately gauged.

The question, therefore, of the removal of a barrier involves a detailed investigation into the position and adequacy of adjoining or neighbouring barriers; the position, capacity and sufficiency of possibly numerous pumping establishments in a mineral field, and of the damage likely to result in the event of an error in judgment being made in sanctioning the working of a barrier. The questions involved are largely ones for mining experts.

We are of opinion that this detailed investigation would properly fall within the duties of the Mining Department which we recommend should be established, and we are in accord with the recommendation of the Coal Conservation Committee that it is desirable that the Mining Department should be empowered to obtain a survey of all barriers in a mineral field and other relevant information through District Committees to enable a sound judgment to be come to as to what barriers are unnecessary and could be removed.

Mutual private arrangements have been carried out in some mineral districts in the way of taking over pumping stations and concentrating the pumping of water. This has had the effect not only of economising in the cost of dealing with the water, but also of allowing a number of mineral barriers to be safely dispensed with, as, for example, in South Yorkshire, where a mutual pumping scheme has been adopted with good results, and a large amount of coal originally arranged to be left in barriers will be rendered available for working.

We feel that with the good offices of the Mining Department which we suggest should be set up these mutual arrangements can be, and are likely to be, more generally adopted, and the provision that we propose, *viz.*, that anyone likely to be adversely affected by any such scheme should have the right of being heard before the Sanctioning Authority, will provide the necessary safeguard to any interests requiring protection.

44. Two alternative methods of procedure in dealing with the sanctioning of barriers have been suggested to us:—

(1) That when the Mining Department have acquired all the necessary information as to barriers in a mineral field through the District Committee, the plans showing which barriers are considered to be unnecessary, and which they propose to permit to be worked as opportunity arises, together with the position and size and extent of any barriers which they would propose to substitute, should be advertised for sectional portions of a mineral field in a similar manner to which deposited plans under private bill legislation are now dealt with, and that the hearing of any objections by persons who consider themselves to be adversely affected by any suggested removal or substituted position of a barrier or barriers should take place before the Sanctioning Authority, who would have power to make such Order, confirming or modifying the proposals, as in their judgment was adequate to the circumstances.

(2) As an alternative, it is suggested that after the Mining Department have acquired the necessary information as suggested under the first alternative, the granting of a particular barrier might be dealt with when an applicant was prepared to work it. It would in this case be necessary for the Mining Department, if they saw no objection to the working of the barrier to advertise the proposed working in the public Press, and if no objection was received within a specified time, they should have power to authorise the working of

the barrier. In the event of any objection being received, the objecting parties should be entitled to be heard before the Sanctioning Authority.

We favour the first alternative, which in our judgment has several advantages over the second, *e.g.*, such a procedure as is suggested would have the effect of focussing the opinion of the mining experts of a mineral field, and of those likely to affected, upon the whole question of the mineral barriers in their particular district and enable the whole question to a large extent to be disposed of at one time.

Further, we consider that there would be less likelihood of errors of judgment resulting than if barriers are dealt with piecemeal, as would be the case under the second alternative.

We therefore recommend that the Mining Department should have power to prepare a scheme dealing with all the barriers in a mineral field (the limits of which should be determined by the Mining Department), showing the extent of the barriers which the Department propose should be worked and the extent of the barriers which the Department propose should be left or substituted, and that such scheme should be advertised and that all parties affected should have the right to appear before the Sanctioning Authority when application is made to approve the scheme, and that the Sanctioning Authority should on such application make such Order as may be appropriate both as to the barriers to be left or substituted and as to the working of the barriers which are to be worked.

45. The removal of barriers may entail the erection of new pumping machinery. The cost of this would, of course, be an important item for consideration before deciding to remove the barriers. In the normal case if the profit value of the minerals exceeds the additional pumping cost, it may be anticipated that the mineral workers interested will be willing to incur the cost. Conversely, if the anticipated cost of pumping exceeds the profit to be gained, as a rule it will not be in the national interest to work the minerals.

The difficult question to decide is whether, in the event of there being a very large amount of minerals in barrier, and of the mineral workers concerned not agreeing to put up a combined pumping plant, the Mining Department should be allowed by the Sanctioning Authority to do so, and the cost charged by a district rate upon the mineral workers benefited. As a rule we think not; but we recognise that, in an exceptional case, it might be desirable that the Sanctioning Authority should make such an Order.

46. As the damage which may be caused by allowing a necessary barrier to be removed may be very serious, and may even lead to the total commercial loss of a mine, and adversely affect other mines, we think it essential that adequate provision should be made to secure compensation for such damage.

As in the case of compensation to surface and adjoining owners entitled to support (paragraphs 31 and 33), so in this case also we are of opinion that such compensation should be secured by an insurance fund, to which both the mineral owner and the mineral worker, and any other persons benefited by the release of the minerals in the barrier to be worked, should contribute, and that the sufficiency of the insurance fund to meet all claims should be guaranteed by the State.

It is to be noted that the conditions affecting the insurance fund to provide compensation for damage caused by the removal of a barrier (hereinafter called the Barrier Insurance Fund) would differ in many material respects, from the insurance fund which we have recommended above should be established to secure compensation to surface and adjoining owners entitled to support (hereinafter called the Support Insurance Fund). We therefore think it essential that the two funds should be kept distinct and administered separately. The advisability of the removal of a barrier involves investigations, and depends on considerations, such as the possible loss of life, which are very different from those involved in giving the right to work, notwithstanding the right of the surface or adjoining owner to support.

It is possible that the damage which may result from working a barrier will be very much greater than the damage likely to be caused by subsidence of the surface, and there is greater difficulty in ascertaining the actual risk. Moreover, it is probable that, in view of the possibility of great damage being caused, the mineral worker, in some cases, would not be willing to undertake the risk of working a barrier, even if he obtained permission to do so; and that, as his own mine would be the first to suffer if any damage occurred, it may be necessary, if it is in the national interest that the barrier should be worked, that the mineral worker himself should be indemnified against loss by the Insurance Fund. In this respect the Barrier Insurance would differ from the Support Insurance, as in the latter case the mineral worker only requires to insure against claims by other parties for damage.

In other respects we think that the Barrier Insurance Fund should be established on the same principles as we have recommended above in the case of the Support Insurance Fund.

We anticipate that it will not be possible to make any general actuarial calculation of the risk involved in working barriers, and that each case will have to be considered separately in view of the special circumstances by which it is affected.

We recommend, therefore, that an insurance fund should be created, out of which compensation can be paid for damage arising from the working of barriers under an Order of the Sanctioning Authority, whether to property of the mineral worker working the barrier in question, or of other parties. Such insurance fund should be guaranteed by the State, and its administration should be similar to that of the Support Insurance Fund, which we have recommended should be established. Whenever the Sanctioning Authority makes an Order authorising the working of any barrier, it should fix the amounts to be contributed to the Barrier Insurance Fund by the mineral worker, the mineral owner and any other parties benefited by the Order respectively.

SUMMARY OF RECOMMENDATIONS.

47. Our main recommendations may be summarised as follows:—

(i) The Sanctioning Authority should be the only authority having power to make Orders for the compulsory acquisition or working of minerals, or of rights in over or under land affecting the working of such minerals (paragraph 5).

(ii) There should be a Government Mining Department, having initiative, advisory and executive powers. Such Department should have power to entertain and examine applications for leasing or working minerals, the working of which can be shown to be in the national interest, and should make recommendations as they think fit. The Department should also, on their own motion, make recommendations for the like purposes; the recommendations should take the form of recommending an Order to be made by the Sanctioning Authority. The persons affected to have a right of objection within a limited time (paragraphs 6 and 7).

(iii) The Mining Department should be a branch of the Home Office (paragraph 8).

There should be a strong Advisory Council as an essential part of the administrative machinery of the Home Office (paragraph 8).

(iv) The Advisory Council should consist of men eminent in branches of science connected with the mining industry, and representatives of owners, workers and all other interests in the industry. They should also have district sub-Committees reporting to them, and similarly constituted.

The main duties of the Advisory Council would be:—

(1) To consider the problems effecting the nation's mineral resources.

(2) To assist the Mining Department as regards any negotiations between conflicting interests.

(3) To advise the Mining Department as to recommendations to be made to the Sanctioning Authority for compulsory Orders.

(4) To advise the Mining Department as to the nature and method of recording returns, plans and other information required.

(5) To bring to the notice of the Home Secretary specific difficulties which may from time to time arise in the development or working of minerals, with a view to the investigation and discussion of the difficulty by the Advisory Council, and the recommendation of an appropriate solution (paragraph 9).

(v) Notice of intention to commence working should be given to the Mining Department not less than two months before any working is commenced, such notice to be accompanied by such information as to the proposed area, boundaries, and general method of development in relation to other workings, existing or potential, in the same mineral field as may from time to time be prescribed by the Mining Department. The duty to give such notice and information should be enforceable by the imposition of adequate penalties (paragraph 10).

(vi) Notice of intention to abandon or discontinue working should be given to the Mining Department at least three months before working is to cease, such notice should state whether abandonment or discontinuance is intended, and should be accompanied by such plans and other information as shall be prescribed by the Mining Department. The duty to give such notice and information should be enforceable by the imposition of adequate penalties (paragraph 11).

(vii) Wherever the best development of the nation's mineral resources is impeded by the rights of private property an application may be made to the Sanctioning Authority to obtain compulsory powers to deal with the situation on fair terms to the owner (paragraph 12).

(viii.) (a) Where interference in the national interest with existing rights, whether at common law or contractual, is sought in connection with the working of minerals, an application should, in the first instance, be lodged with the Mining Department.

(b) The Mining Department should try to effect an arrangement between the parties concerned; if such an arrangement cannot be effected, any party should have the right to apply to the Sanctioning Authority for a compulsory Order.

(c) If it is brought to the notice of the Mining Department, and they are satisfied that minerals are not being worked which, in the national interest, ought to be worked, they should be empowered on their own motion to negotiate an agreement with some mineral worker for getting the minerals in question, and to obtain the consent of the other parties affected and, on failure of such negotiations, the Department should be empowered to apply to the Sanctioning Authority for a compulsory Order of an appropriate character in favour of some mineral worker willing to work (paragraph 13).

(ix) Where minerals have been already bought or leased by workers with a view to future development, no application for a compulsory Order with reference to these minerals should be entertained by the Mining Department or the Sanctioning Authority until they are satisfied that for some definite reason it is in the national interest that a compulsory Order should be made, and that the applicant has made reasonable efforts to obtain satisfactory terms by negotiation (paragraph 14).

(x) In cases where neither the lord of the manor on the one hand, nor the copyholder or customary freeholder on the other hand, can work minerals without the consent of the other, if one party refuses his consent, the other party should be entitled to apply to the Sanctioning Authority for an Order settling the terms on which the minerals are to be worked (paragraph 15).

(xi) Where minerals are owned in small separate areas by a number of owners, or where, in an area of whatever size, the minerals are owned by a number of owners entitled as tenants in common, and in consequence it is difficult or even impossible to obtain agreement, the intending mineral worker should be able to apply to the Mining Department, and, if the Mining Department, after negotiation, fail to secure agreement with the owners, the intending mineral worker should be able to apply to the Sanctioning Authority for an appropriate Order (paragraph 16).

(xii) (a) Specific statutory powers should be given to tenants for life and to trustees who have power to grant a mining lease to grant an option for a limited period for taking up a mining lease; any consideration for such option to be treated as capital money.

(b) Where under a settlement there is no tenant for life with power to grant mining leases under the Settled Land Acts, the trustees of the settlement should be given statutory authority to exercise the powers of a tenant for life under the Settled Land Acts.

(c) The restrictions on dealing with minerals imposed on certain corporate bodies should be removed by amendment of the Acts by which their powers are governed.

(d) In general the Sanctioning Authority should over-ride any legal disability which interferes with the grant of such leases or other working powers as, in their discretion, they consider desirable in the national interest (paragraph 17).

(xiii) Where no owner can be traced with a title to minerals which the Mining Department consider should, in the national interest, be worked, the Mining Department should be empowered to apply to the Sanctioning Authority for an Order vesting the minerals in themselves (paragraph 18).

(xiv) Application should be made to the Sanctioning Authority for compulsory Orders for wayleaves, both above and below ground, and accommodation land and other surface rights (paragraphs 20 and 21).

(xv) The Sanctioning Authority should, by compulsory Order, deal with cases where there was a possibility of loss to the nation occasioned by the development of valuable mineral products being prevented or impeded by restrictive covenants (paragraph 22).

(xvi) Where the terms of a lease clearly hamper the development of minerals, whether such terms were unduly restrictive at the time the bargain was made, or have become so owing to circumstances which were not contemplated by the parties in the first instance, with the result that there is a danger of minerals being lost to the nation, it is clearly in the national interest that the Sanctioning Authority should revise the terms of the bargain where it is not, or, for some reason, cannot be, done by consent (paragraph 23).

(xvii) Where the productivity of a mineral field which has been generally opened out, is being impaired owing to the lay-out, whether of the whole field or of individual concerns, not having been planned in advance with a view to making the best use of the minerals from a technical point of view, the Mining Department should only intervene if they are satisfied that the national interest necessitates interference. Where the Mining Department are so satisfied, they would endeavour to effect the necessary re-arrangement by negotiation. On failure of such negotiation, the Mining Department should have power to apply to the Sanctioning Authority for a compulsory Order to carry the necessary re-arrangement into effect, and to vest the interests of the existing mineral workers or worker in some other mineral workers or worker willing to work the minerals in accordance with the scheme of re-arrangement. As a last resort, the Mining Department should have power to apply to the Sanctioning Authority for a compulsory Order vesting the interests of the existing mineral workers or worker in themselves on proper terms as to compensation (if any), with power for the Mining Department themselves to work the mines in question for such a period as may, from time to time, be prescribed by the Sanctioning Authority (paragraph 24).

(xviii) Where the existing mineral worker, through inefficiency, or for some other reason, is so mismanaging his whole concern as to prejudice the national interest, the Mining Department should endeavour by negotiation to obtain improved methods. On failure of such negotiation, the Mining Department should be able to apply to the Sanctioning Authority for a compulsory Order to transfer the interest of the existing mineral worker to some other mineral worker willing to undertake the working. As a last resort the Mining Department should have power to apply to the Sanctioning Authority for an Order vesting the interest of the existing mineral worker in themselves, with power themselves to work the mine in the manner indicated in the preceding paragraph (paragraph 25).

(xix) Where existing mines are about to cease working which the Mining Department are of opinion should, in the national interest, continue to be worked, the Mining Department should endeavour to find a worker willing to undertake the working of the mine before the existing worker ceases working. On failure to find such a worker, the Mining Department should be empowered to apply to the Sanctioning Authority for an Order authorising the Mining Department to continue the working for such a period, as may, from time to time, be prescribed by the Sanctioning Authority. Under such an

Order the Mining Department would appoint a manager to work the mine in question. When a mineral worker had been found, the Mining Department should apply to the Sanctioning Authority for an Order vesting in the intending worker the interest of the worker who ceased working, or arrange for a fresh lease to the former from the mineral owner (paragraph 26).

(xx) The Sanctioning Authority should have power, if they think fit, to make an interim Order restraining all dealings with the surface or minerals affected, pending the hearing of an application for a compulsory Order. In urgent cases, where damage is anticipated as, for instance, an inrush of water or subsidence of the surface, it should be open to the Mining Department or any party liable to be affected to apply to the Sanctioning Authority for an Order authorising the Mining Department to take executive action, even where no application to the Sanctioning Authority is pending (paragraph 27).

(xxi) (a) An insurance fund should be created, out of which compensation can be paid for damage to property which, but for a compulsory Order of the Sanctioning Authority, would have enjoyed a right of support.

(b) Such insurance fund should be managed by the Mining Department, and guaranteed by the State.

(c) Whenever the Sanctioning Authority make a compulsory Order for the working of minerals, notwithstanding the right of the surface or adjoining owner to support, the Sanctioning Authority should—

(i) in proper cases make it a condition that the mineral worker should contribute to the insurance fund;

(ii) fix the amount of the contributions to be paid by the mineral worker and if it is proved that any other persons will be financially benefited by such Order apportion such contributions between the mineral worker and the parties benefited by the release of the minerals.

(iii) with a view to minimising surface damage, lay down such general conditions of working as may be reasonable, and failure to observe such conditions should render the mineral worker liable to refund to the insurance fund any compensation payable thereout for damage caused by such failure.

(d) Upon payment of, or giving security for, the contribution so assessed the mineral worker should, subject to observance of any condition imposed by the Sanctioning Authority, have a complete indemnity from all claims for damages and costs in respect of working the released minerals.

(e) Upon the granting of an Order for the compulsory working of minerals, notwithstanding the right of the surface or adjoining owner to support, the right of such owner to an injunction prohibiting the working of the minerals should be suspended, so long as the working of the released minerals was in accordance with the Order of the Sanctioning Authority. But such owner should be entitled to recover damages for injury caused by the working of the released minerals from the insurance fund.

(f) It should be the duty of the Mining Department, by their Inspectors, to inspect and report upon the due performance by the mineral worker of the conditions laid down by the Sanctioning Authority, and to take such proceedings as may be necessary to enforce the same. The Inspectors of the Mining Department should also have power to inspect the surface over the released minerals.

(g) Where any claim is adjudicated by the Court, all parties interested should be before the Court, and the Court should have the power and duty of adjudicating on all questions arising under the claim.

(h) The Mining Department should have power to insure any person by voluntary agreement upon such terms as the Mining Department may determine.

(i) With a view to encouraging careful working by the mineral worker, the Mining Department should have power to reduce or grant a rebate on the contributions payable by the mineral worker if the Mining Department are of opinion that the mineral worker has, by greater care or otherwise, reduced, or will in future reduce, the risk (paragraphs 28 to 34).

(xxii) (a) The Sanctioning Authority, when making an Order for the compulsory working of minerals, should make such Orders restricting or governing the user and development of the surface, and of adjacent mines as may be calculated to minimise damage caused by the working of such minerals, on payment of proper compensation by the persons benefited to the persons affected by the Order.

(b) Failure to comply with the conditions and directions laid down in such an Order should affect the right to compensation from the insurance fund.

(c) The Sanctioning Authority should consider and decide the period in which the working of minerals under a compulsory Order must be completed. The cessation of working should not prejudice claims for damage happening thereafter as a result of such working.

(d) The Mining Department should be consulted by the Local Government Board before any Town Planning scheme in a mining district is approved (paragraph 35).

(xxiii) Where any surface owner has no right of support, or an inadequate right of support, he should be entitled to apply to the Sanctioning Authority for an Order giving him

such right of support as may be reasonable, having regard to the nature and extent of the support required and the method of working the minerals, and on such terms as the Sanctioning Authority may determine (paragraph 36).

(xxiv) The legislature should, subject to terms satisfactory both to the royalty owners and to the colliery proprietors in England and Wales *inter se* being agreed, give statutory effect to the principles embodied in the proposed arrangement between the railway companies and colliery owners of England and Wales for amending the Code of the Railway Clauses Act, 1845 (paragraphs 38 to 40).

(xxv) Representatives of the railways in England and Wales constructed prior to the Act of 1845, railways authorised in future, Scotch railways, waterworks constructed under the Waterworks Clauses Consolidation Act, 1847, and of canals and of various undertakings affected by similar considerations, should be summoned to confer with a view to making an agreement in regard to minerals required to be left for the support of these works, and if an agreement, consistent with the national interest, is reached the legislature should give statutory effect to it (paragraph 41).

(xxvi) The Mining Department should have power to prepare a scheme dealing with all the barriers in a mineral field (the limits of which should be determined by the Mining Department) showing the extent of the barriers which the Department propose should be left or substituted. Such a scheme should be advertised, and all parties affected should have a right to appear before the Sanctioning Authority when application is made to approve the scheme. The Sanctioning Authority should, on such application, make such Order as may be appropriate, both as to the barriers to be left or substituted, and as to the working of the barriers which are to be worked (paragraphs 42 to 44).

(xxvii) Where a scheme of combined pumping is necessary in order that a barrier may be worked, and the Mining Department are unable to effect by negotiation an arrangement for combined pumping by the collieries concerned, and it is in the national interest that the barriers should be worked, the Sanctioning Authority should make an Order authorising the Mining Department to erect a combined pumping plant, the cost to be charged upon the collieries benefited, by means of a district rate (paragraph 45).

(xxviii) An Insurance Fund should be created, out of which compensation can be paid for damage arising from the working of barriers under an Order of the Sanctioning Authority, whether the property of the mineral worker working the barrier in question, or of other parties. Such Insurance Fund should be guaranteed by the State, and its administration should be similar to that of the Support Insurance Fund. Whenever the Sanctioning Authority make an Order authorising the working of any barrier, they should fix the amounts to be contributed to the Barrier Insurance Fund by the mineral worker, the mineral owner, and any other parties benefited by the Order respectively (paragraph 46).

We are, Sir,
Your obedient servants,

(Signed) LESLIE SCOTT.
W. FORSTER BROWN.
A. S. COMYNS CARR.*
JAMES I. DAVIDSON.*
DIXON H. DAVIES.
ELLIS DAVIES.
R. ELLIOTT-COOPER.
GEORGE M. FREEMAN.
W. S. HALDANE.*
WM. MIDDLEBROOK.
ADAM NIMMO.
THOS. R. RATCLIFFE-ELLIS.
C. E. RHODES.
ARTHUR T. THRING.

(Signed) H. EUSTACE DAVIES, BERNARD H. DRAKE } Joint Secretaries.

ROBERT H. DRAYTON, Assistant Secretary.

Dated 29th April, 1919.

*Subject to Reservations below.

RESERVATIONS BY MR. A. S. COMYNS CARR.

1. I regard this Report as being without prejudice to the question of Nationalisation, entire or partial, of the ownership or working of minerals or of both, which questions are now being considered by the Coal Industry Commission.

2. I do not agree with Section IV., relating to "the Code" and the Howley Park Judgment. In my opinion, the Code and all similar legislation should be repealed, and the whole question of support for railways and similar undertakings should be dealt with in each case by the Sanctioning Authority, with recourse to the Insurance Fund, in the manner recommended in Section III., and, of course, with due regard to the existing legal rights of the parties. I fail to see any distinction between such cases and other cases of support. With regard to new public undertakings on the surface, the extent (if any) to which minerals or a right of support

should be acquired by the promoters should be determined by the Sanctioning Authority when granting compulsory powers, and if no right of support is given, compensation should be assessed at the time of purchase on that basis without regard to any power to claim a further right of support, thus reversing the decision in *re* Earl of Carlisle and Northumberland County Council (105 L.T. 797), which has greatly hampered the development of small holdings in mineral areas. (Signed) A. S. COMYNS CARR.

RESERVATIONS BY MR. JAMES I. DAVIDSON AND SIR WILLIAM HALDANE.

On the information we have had before us, we are unable to concur in the recommendation that, subject to agreement of the royalty owners, the legislation should give statutory effect to the principles embodied in the proposed arrangement between the English Railway Companies and Colliery Owners for amending the Mining Code of the Railway Clauses Act, 1845, with reference to the Howley Park Judgment. The terms embodied in the proposed agreement, as set out in the second Appendix to the foregoing Report, are complex in their nature, and we are not satisfied that the results of the Agreement when carried into effect would be consistent with public interests. We are aware of objections to the terms proposed by representatives of both the Scottish Railway Companies and Colliery Owners which centre largely on possible results needlessly sterilising coal which might be recovered without undue risks to the surface works.

In particular, the proposal that the Railway Company, acting, doubtless, in accordance with the engineer's advice, should have the right to define the area of coal to be left unworked, appears to us to be contrary to public policy, and the principles laid down elsewhere in the Report.

While we agree that it would be useful to effect a working arrangement for liberating the coal which the Howley Park Decision may have had the effect of needlessly reserving for support, and for saving the expense and delays involved in litigation or arbitration on the subject, we think that the terms should be left to the Sanctioning Authority to settle in the public interest.

The proposals contained in the foregoing Report with regard to the recovery of support minerals generally, are adequate to deal with the support of Railway Works as well as other surface property, and the Sanctioning Authority, with the assistance of the Mining Department would doubtless be able to adjust fair and convenient terms for general application to cases arising as the result of the Howley Park Decision.

We think the Mining Department should be attached to a Ministry more concerned than the Home Office with commercial industry and production throughout the United Kingdom.

(Signed) JAMES I. DAVIDSON.
W. S. HALDANE.

APPENDIX I.

STATEMENT as to RIGHTS of SUPPORT from MINERALS for RAILWAYS and CANALS owned by the LONDON and NORTH WESTERN RAILWAY COMPANY, and constructed under Powers of Acts passed prior to the Railways Clauses Consolidation Act, 1845.

The London and North Western Railway Company was incorporated by an Act of 1846 whereby the then existing undertakings of the London and Birmingham, Grand Junction and Manchester and Birmingham Railway Companies were vested in the Company thereby incorporated.

Section 2 of the Act of incorporation provided that the Railways Clauses Consolidation Act, 1845, so far as the same was applicable and not modified by that Act, should be held to apply to the Company thereby incorporated as if the Act of 1845 had been expressly made applicable to the railways existing at the time of the passing of the Act of incorporation.

By the same Act the various Acts relating to the amalgamated railway companies were repealed, but without prejudice to any pre-existing purchases, conveyances or contracts or the rights reserved thereby.

It was held by the House of Lords in the case of London and North Western Railway Company *v.* Walker (L.R., 1903, Appeal Cases, 289) that the respective rights of the railway company, and of the successors in title of vendors of lands acquired by the railway company under Acts passed prior to the Act of incorporation were not affected by the repeal of the old Acts, and that the provisions of the Railways Clauses Consolidation Act in regard to minerals were inapplicable to lands so acquired.

The main trunk lines of the London and North Western Railway Companies were authorised by Acts passed prior to the Railways Clauses Consolidation Act. Some portions were vested in the Company by their Act of Incorporation and others were vested in them by subsequent Acts, the provisions of which, however, did not affect the pre-existing contractual rights.

The following is a short summary indicating in what respects the rights to support of the surface of the principal railways and canals which have been vested in the London and North Western Railway Company differ from those conferred by the Railways Clauses Consolidation Act, 1845:—

SUMMARY of STATUTORY PROVISIONS as to SUPPORT from MINERALS.

LONDON AND BIRMINGHAM RAILWAY, Acts of 1833 and 1835.
GRAND JUNCTION RAILWAY, Act of 1833.
MANCHESTER AND BIRMINGHAM RAILWAY, Acts of 1837.
CREWE AND CHESTER RAILWAY, Acts of 1837.
CHESTER AND BIRKENHEAD RAILWAY, Acts of 1837.
CHESTER AND HOLYHEAD RAILWAY, Acts of 1844.
AND BRANCHES.

The chief differences consist in (1) provision for the purchase of minerals required for support within the prescribed distance instead of compensation for leaving such minerals unworked; (2) notice to be given twenty-one days before working instead of thirty days; (3) provision for payment to railway company for all coal or other minerals excavated in making headways and other communications to provide access through the purchased minerals for severed minerals. Payment is to be at the same rate or price at which the Company shall have paid for the minerals purchased.

Prohibition against sinking any shaft, pit or quarry in or upon the railway with reservation of right of mine worker to fix ropes, chains, etc., over, under, across or by the railway, but not so as to injure the railway or interrupt free passage along the same.

(NOTE.—The prescribed distance within which notice of working is to be given is forty yards as in the Railways Clauses Consolidation Act.)

NANTILE RAILWAY, NORTH WALES, Act of 1825.

Reserved mines under lands purchased, and provides that the same may be worked by the owners or lessees under said lands or any railway or wharfs of the Company as though the Act had not passed, but so nevertheless as not to prejudice or injure such railways, wharfs or other works thereby authorised or directed to be made.

Prohibits the digging, sinking or making of any shaft, pit or quarry or the making of any adit, shaft or cut under the railway or tramroad or under the banks, bridges or works upon which any part of the railway or tramroad should be made, or the fixing of any shore ropes, chains, connection rods or any other ropes or other matters over, under, across, near or by any part of the railway or tramroad so as to injure the road or to interrupt the free passage of carriages with their lading along the same.

CROMFORD AND HIGH PEAK RAILWAY, Act of 1825.

Similar provisions as to mines to those relating to last-mentioned railway.

LIVERPOOL AND MANCHESTER RAILWAY, Act of 1826.

The Act merely reserved from purchase of lands by the railway company mines or minerals or coal, stone or slate thereunder, except only so much of such minerals as should be necessary to be dug, etc., and be carried away for the purposes of the Act, with the provision that "all such mines, minerals, coal or slate shall be taken to be excepted out of such purchase "and may be worked by the owners or lessees thereof under the said lands or any railway "or other works of the Company as if this Act had not been passed.

The railway companies having been advised that the provision only applied to subjacent mines, and did not entitle the mine worker to withdraw support either from subjacent or adjacent minerals, the railway company have in most cases entered into agreement with the mine workers permitting the minerals, both subjacent and adjacent, to be worked on the terms of the mine worker contributing towards the expense of making good damage caused by subsidence.

ST. HELENS AND RUNCORN GAP RAILWAY, Act of 1830.

This Act contains a similar provision as to mines to that in the Liverpool and Manchester Railway, Act of 1826.

BOLTON AND LEIGH RAILWAY, 1825.

This Act contains a similar provision as regards mines (Section 32) to that in the Liverpool and Manchester Railway Act of 1826. The Section concludes with the following words:—"But so as nevertheless not to prejudice or to injure such railways, wharfs or other works thereby "authorised or directed to be made."

Negotiations are proceeding with mine workers with the object of enabling the minerals to be worked under or near the railway on the terms of the mine owner reimbursing the amount of damage caused to the railway company by the working.

WIGAN BRANCH RAILWAY (Section between Wigan and Newton), Act of 1831.
WIGAN AND PRESTON RAILWAY (Section between Wigan and Preston), Act of 1830.
NORTH UNION RAILWAY (Amalgamating Wigan Branch and Wigan and Preston Railway), Act of 1834.

The railway company are advised that they are entitled to lateral support as the mining clauses only relate to minerals under the lands purchased. Special provisions enabling the

railway company to purchase for support for masonry and buildings minerals lying within forty yards of such masonry or buildings measured in the underlying mines, *i.e.*, vertically from the railway.

Arrangements have been made in certain cases for enabling the mine workers to extract the minerals, notwithstanding the Statutory provisions, on payment of compensation for past damage and contributing towards the cost of making good future subsidence caused by mine working. Similar arrangements are in course of negotiation.

LANCASTER AND PRESTON RAILWAY, Act of 1837.

Similar mineral clauses to those in London and Birmingham, Grand Junction, Manchester and Birmingham, Crewe and Chester and Chester and Holyhead Railway Acts.

LANCASTER AND CARLISLE RAILWAY ACT, 1844.

Merely except (section 194) from the purchase of lands mines of coal, ironstone, lime, slate and other materials under the lands purchased except such parts as shall be necessary to be used in the construction of the railway unless the same shall have been expressly purchased by and conveyed to the railway company.

There is, therefore, no power of working so as to withdraw support from the railway. There is no record of any question of support from minerals having arisen in regard to this railway.

SIRHOWY RAILWAY, MONMOUTHSHIRE.

Authorised by Sirhowy Tramroad Act, 1802. This Act incorporated the provisions of the Monmouthshire Canal Act, 1792, which do not affect the right of lateral support for the railways authorised but only the right of vertical support for such railways.

Negotiations are proceeding with certain mine workers with the object of enabling their minerals to be worked subject to the mine worker and the royalty owners contributing to the expense of making good damage caused to the railway undertaking by mine workings.

CANALS.

ST. HELENS CANAL (Formerly Sanky Brook Navigation), Acts 1754 and 1830.

The Acts contain no provisions with reference to mines. It was decided by the Court of Appeal in the case of L. and N.W. Railway Company v. Richard Evans and Co., Limited (L.R. 1893, 1 Ch. 16), that the owners of the canal undertakings are entitled to both lateral and vertical support for the canal undertaking from minerals owned by the successors in title of the vendors of lands on which the canal was constructed and an injunction was granted to restrain workings by such successors in title which might interfere with such support.

Notwithstanding the judgment the defendants have been allowed to continue their workings on their reimbursing the Company annually the amount expended in making good damage to the canal works through subsidence occasioned by the mine workings. A draft agreement embodying these terms was submitted some years ago but has not yet been completed. In the meantime the Railway Company have been reimbursed the expense of making good such damage.

LANCASTER CANAL ACT, 1792.

By section 55 mines under the lands purchased were reserved to the vendors with powers of working the same not thereby injuring, prejudicing or obstructing the intended canal. By section 56, however, provision is made for the payment by the canal undertakers to the mine worker of compensation for leaving unworked mines near or under the canal for support of the canal.

HUDDERSFIELD CANAL ACT, 1794.

This Act contains provisions as to support for the canal undertakings from minerals under or near thereto similar to those contained in the Lancaster Canal Act.

SHROPSHIRE CANAL ACT, 1788.

This Act contains no provision as to mines and, therefore, under the decision of the Court of Appeal in the case of L. and N.W. Railway Company v. Richard Evans and Co., Limited, before referred to, the owners of the undertakings are entitled to both lateral and vertical support.

APPENDIX II.

Proposed arrangement between the Railway Companies and Colliery Owners of England and Wales for amending the Code of the Railways Clauses Consolidation Act, 1845.

The following arrangement to be restricted to existing railways in England and Wales governed by the Railways Clauses Consolidation Act, 1845, and to which the distance of forty yards mentioned in Section 78 of that Act applies:—

1. If the owner, lessee or occupier (hereinafter referred to as "the Mine Owner") of any mines or minerals lying near the railway is desirous of working the same he shall give to the company notice of his desire thirty days before commencing to work within a distance from the railway works which is equal to one-half the depth of the proposed workings below the natural surface of the ground, but at a not less distance than forty yards.

2. So much of the mines or minerals within the said distance as shall be reasonably necessary for the support of the existing railway works and as the railway company shall require to be left unworked shall be so left, whether the same be wholly or partly within or without the forty yards. The railway company shall in their notice requiring such coal to be left specify the particular length or part of railway intended to be supported by the reserved coal.

3. The railway company shall pay to the mine owner according to his interest therein for any mines or minerals so left:—

(1) If the same shall be entirely within the area covered by the existing code the amount which may be assessed either by agreement or by arbitration under the provisions of the Railways Clauses Consolidation Act, 1845.

(2) If the same shall be partly within and partly without such area.

(a) The amount which would be assessed under the said Act for the portion thereof within the code area less any such proportion of the amount as would be attributable to damage for severance; and

(b) In respect of the portion outside the code area an amount calculated at one-third of the rate per ton of the price arrived at under (a).

(3) Any increased cost of working the remaining coal of the mine owner due to the railway company not having given to the mine owner counter-notice indicating the pillar to be left unworked within such a reasonable time as would have enabled the mine owner to avoid the increased cost.

4. The mine owner having given notice as aforesaid shall be free to work all his mines and minerals not to be left unworked as aforesaid, free from any responsibility for any resulting damage, but subject to a liability to contribute to the cost incurred from time to time by the railway company in making good the damage caused to the railway by such working (other than any damage to the works within the specified length or part of railway intended to be supported by the coal to be left unworked) in proportion to the depth of the mine from the surface as under:—

Depth Yards.	Percentage.	Depth Yards.	Percentage.
160	Nil	270	21
170	3	280	23
180	5	290	24
190	8	300	25
200	10	350	30
210	12	400	35
220	14	450	40
230	15	500	45
240	16	550	50
250	17	600	55
260	19	650 and over	60

The percentage at intermediate depths to be in proportion.

"Depth" means the average vertical distance between the railway company's rails over the area to which the mineowner's notice refers and the seam of coal or other minerals in question.

Provided that the maximum amount payable by the mine owner in respect of this liability shall be limited by a sum calculated at the rate of sixpence per ton upon the whole of the mines and minerals contained in the supporting area lying more than forty yards distant from the edge of the railway on both sides and comprised in any seams belonging or formerly belonging to the mine owner within the supporting area for the portion of the railway works which have been or would be affected by such working. Provided that for this purpose seams the working of which has been suspended, discontinued, or abandoned more than six years before the date of the railway company's claim shall be disregarded. Such supporting area shall be deemed to be that which is contained by two descending lines from the boundary of the railway works at the following inclinations:—

(a) From the depth of one hundred and sixty yards to two hundred and fifty yards at an inclination corresponding with the scale set out in paragraph 4.

(b) At all other depths down to six hundred and fifty yards at an inclination of one horizontal to five vertical, and the width of the supporting area at that depth shall be the maximum width for all deeper mines.

One equal third part of any amount payable under this clause to the railway company by the person working the mines shall be borne and paid by the lessor or licensor in the case of any mines worked by any lessee, tenant, or licensee.

Notice so far as is reasonably practicable shall be given by the railway company of their

intention to restore damages caused by working the coal and other minerals where they claim a contribution towards such restoration from the colliery company and such notice shall specify :

(a) The particular length of railway or premises referred to.
(b) Particulars of the damage that has occurred.
(c) The nature of the restoration work intended to be carried out.

5. The dimension of the width of the headways, etc., mentioned in Section 80 of the Railways Clauses Act, 1845, shall be increased in mines below one hundred and sixty yards deep to a reasonable width to accommodate two tramroads so as to comply with the requirements of the Coal Mines Regulations Act say from eight feet to thirteen feet in width, and there should be a minimum distance of forty yards between such headways, etc.

6. The mine owner to be entitled to inspect and take levels of the railway works before the mines and minerals have been gotten and during and after the period of working at reasonable times and subject to reasonable conditions to be agreed with the railway company's engineer.

7. The railway company to keep separate accounts differentiating the cost of ordinary maintenance from the cost of repairs due to mining subsidence. Such accounts to be open to inspection of the mine owner, and any differnce settled by arbitration.

8. An arbitration clause.

9. The existing agreements between railway companies and collieries to be maintained notwithstanding the existence of powers in such agreements for their determination the understanding being that should these agreements notwithstanding this assurance be determined the minerals included therein should be exempted from the arrangement now being negotiated.

NOTE.—The foregoing expresses in substance the arrangement, but it may be desirable that the language in which it is expressed may have to be considered and amended so as to give suitable effect to the intentions of the parties.

APPENDIX III.

INTERIM REPORT of the ACQUISITION AND VALUATION OF LAND COMMITTEE on the ACQUISITION FOR PUBLIC PURPOSES OF RIGHTS AND POWERS IN CONNECTION WITH MINES AND MINERALS.

To the Right Honourable Sir AUCKLAND GEDDES, K.C.B., M.P., Minister of Reconstruction.

SIR,

In our first Report we left certain questions relative to the development of the nation's mineral resources, which had been specially referred to us, to be dealt with in another Report, and we are now in a position to submit an Interim Report on these questions.

The questions referred to us were to consider and report:—

(1) Whether, and if so, to what extent, the general principles appropriate to the acquisition and valuation of land for public purposes should be applicable to the special case of mines and minerals.

(2) What action is desirable to meet the difficulty of obtaining on reasonable terms—
(*a*) wayleaves, both above and below ground;
(*b*) surface rights;
when such wayleaves or surface rights are required for the erection or extension of plant or premises in connection with the development of the nation's mineral resources.

(3) Generally, whether any, and, if so, what, action is desirable to limit or extinguish the loss to the nation occasioned by leaving valuable products in mines for the purpose of supporting the surface, or as barriers, or by being landlocked or by restrictive covenants, or otherwise.

(4) What changes are advisable in the law in connection with questions of support.

2. The members of our Committee who have served on this Committee are Mr. Leslie Scott, K.C., M.P. (Chairman), Mr. A. S. Comyns Carr, Mr. J. Inglis Davidson, Mr. Dixon H. Davies, Mr. Ellis Davies, Mr. George M. Freeman, K.C., Sir William S. Haldane, Sir William Middlebrook, M.P., and Sir Arthur Thring, K.C.B.

In order to strengthen the Committee in the investigation and decision of the problem, referred to us, additional members with special knowledge and practical experience of the subject were appointed to the Committee. The additional members so appointed were Mr. W. Forster-Brown, Sir Adam Nimmo, K.B.E., Sir Thomas Ratcliffe-Ellis, Mr. C. E. Rhodes and Sir R. Elliott-Cooper, K.C.B.

3. Since we embarked upon our investigation, questions relating to the mining industry have arisen in an acute form, which go far beyond the scope of our enquiry.

The question of wages, hours and conditions of employment in mines, and also the general question of the relations between employers and employed in the control of the mining industry, are entirely outside our terms of reference, and we do not, therefore, submit any suggestion on these questions. But wages, hours, employment and other conditions of

labour ultimately depend on the productivity of an industry, and as by our terms of reference we are asked to consider a number of questions which directly affect the productivity of mining industries in this country, we conceive it our duty at the present juncture to submit an Interim Report, with a brief outline of the main conclusions at which we have arrived upon the specific questions remitted to us for consideration.

4. Up to the present the development of mineral resources in this country has been left to private initiative. State supervision has been limited to questions affecting the health and safety of persons employed in mines and similar matters. The decision whether minerals should be worked at all, and, if so, upon what terms or conditions has been left to private agreement. The State has not exercised any control over the plan or manner of development.

5. The chief difficulties in the way of development which have arisen out of this system may, we think (so far as our enquiry is concerned), be enumerated as follows:—

(i) In some cases owners have restricted development on grounds which are either wholly unreasonable, or, although perhaps reasonable from their point of view, contrary to the national interest.

(ii) Unless the owner has had control of a sufficiently wide area, and been gifted with adequate foresight and wisdom, in himself or his advisers, there has been no general plan of mineral development proceeding on a scientific study of the geological conditions of an area as a whole.

(iii) Where the ownership is distributed in a number of small estates, or where the minerals are owned by tenants in common, it sometimes happens that one or more owners refuse permission to work on any terms, or endeavour to enforce an exorbitant demand or cannot be found, with the result that the area becomes landlocked, and, if it is too small to justify the sinking of a separate shaft, the minerals are permanently lost.

(iv) It often happens that the owner of the surface has not parted with his legal right to the support of the minerals underneath the surface of his land and also under adjoining land. Removal of any appreciable proportion of the mineral—certainly of the least proportion which would be commercially profitable—inevitably causes some subsidence. And subsidence extends not only to the surface vertically above the minerals so worked, but also to the adjoining surface for some distance away. In such a case, apart from his liability for all damage caused to the surface by such subsidence, the mine worker is liable at any moment to an injunction restraining him from working at all, if subsidence is threatened. There are also cases where, although the mineral worker has the right to let down the surface, he can only do so on payment of all damage caused; and in such a case, fearing the risk of subsidence causing greater damage than the profits to be got out of the minerals, he leaves them unworked. In all such cases the minerals so left are for the most part permanently lost to the nation.

(v) Coal is also often left in barriers on the boundary of a mine to prevent the inrush of water from other workings on a higher level. The total area of minerals left in such barriers is very large, and we are satisfied that a comprehensive survey of existing barriers would show that a considerable portion could be worked with safety. But mine managers hesitate themselves to take the risk, because, apart from the danger to life which would arise in certain cases if a mistake were made, and a passage thereby opened for the ingress of water, the expense of pumping may easily eat up the profits of the mine, or even render a large area of mines on a lower level unworkable, and give rise to immense claims for compensation at the instance of the parties interested in those mines.

(vi) It is sometimes difficult for a mine worker to obtain on reasonable terms wayleaves both above and below the surface. The mine worker, in order to work his mine efficiently and economically—as it is in the national interest that he should do—requires right of access on the surface to railways, canals, highways, &c., and below the surface the right to bring coal, &c., from the mines of one lessor through the mines of another lessor. If such rights or wayleaves are denied to him, or are only obtainable on unreasonable terms, the economical development of his mine is impeded, or the cost of production unduly swollen.

(vii) It is not infrequently difficult for a mine worker to obtain on reasonable terms other surface rights which are necessary to the efficient working of a mine. As an instance, a mine worker may have an insufficient area of surface ground for dumping his colliery refuse or other waste products; and as the working of the mine proceeds he will be seriously hampered unless he can obtain reasonable facilities at a reasonable price.

(viii) A mining lease imposes numerous conditions on the lessee as to the method of working as well as provisions for the protection of the surface owner or adjoining mineral owner. In some cases these terms unduly hamper the lessee and prevent the due development of the mine.

(ix) Cases arise where, owing to unforeseen circumstances, a colliery company or other mine worker is unable to continue the working of the mine, or of certain seams in the mine, unless some modification or readjustment is made in the terms of the original bargain between the parties concerned. In such cases the minerals may be lost to the nation.

(x) In some cases the mineral owner may be quite willing to grant all reasonable facilities for development, but owing to some legal disability, whether in himself or

created by the instrument under which he derives ownership, he cannot do so without the sanction of some authority which is competent to overcome this disability.

(xi) In some cases the mineral owner, whether freeholder or leaseholder, is bound by special restrictive covenants imposed for the protection of the surface owner or the owner of adjoining minerals which either impede or prevent the full development of his minerals.

(xii) In some cases, owing to insufficiency of capital, or the desire to snatch a quick profit—*e.g.*, because of the approaching termination of the lease—lessees have (in disregard of proper mining development) picked the eyes out of a mine and abandoned it in such a condition that it can probably never profitably be reopened. We believe that this particular difficulty arises mainly in cases of metalliferous mines.

(xiii) Although the Geological Survey has collected a good deal of valuable information from a purely scientific point of view, and the Home Office is in possession of some very useful records, there is no Government Department regularly receiving and preserving sufficient records of the condition of our mineral resources, developed and undeveloped, as a whole, nor is any Department charged with any general survey of them.

(xiv) There is equally no organised system for the exploration and testing of undeveloped mineral fields.

6. We have considered how the defects above enumerated should be dealt with, and we are of opinion that these defects can best be remedied by the adoption of certain proposals which will be embodied in our main Report, but which may be shortly summarised as follows:—

The main principle on which we proceed is that laid down in our First and Second Reports, viz., that whenever it is in the national interest that land (which includes minerals) should be applied to some use other than that to which existing owners or occupiers are putting it, a case is established for compulsory powers being granted for its acquisition. In the case of the development of the nation's mineral resources, application of this principle leads us to the conclusion that, as a general rule, whenever it is necessary for such development that any rights of user or working, or even ownership should be obtained in either surface or minerals, including rights of working the minerals, the right to let down the surface, rights of way, or, indeed, any right in over or under land, a compulsory Order should be obtainable from the Sanctioning Authority* which we have recommended should be established; always subject to the corollary that just compensation must be paid to the party affected.

We recommend, therefore, that—

(*a*) There should be one Government Mining Department, in which should be centralised all departmental duties in connection with mining. It should have initiative, advisory, and executive powers, and should receive and consider all applications for compulsory powers to work minerals, or in connection with such working, and report thereon to the Sanctioning Authority. It should also, on its own motion, make recommendations to the Sanctioning Authority for the like purposes.

(*b*) The Mining Department should not be a separate Ministry, but a branch of the Home Office (which to-day administers the Mines Regulation Acts).

(*c*) There should be a strong Advisory Council as an essential part of the machinery of the Mining Department, consisting of representatives of the mining industry, including workers, together with men eminent in branches of science connected with the industry. It should also have local sub-committees reporting to it and similarly constituted.

(*d*) Before fresh mines are opened up such information should be furnished to the Mining Department, as will enable it to consider the proposed area, boundaries, and general method of development in relation to other workings, existing or prospective, in the same mineral field, and thus obviate the risk of future production of the field as a whole being impaired by initial mistakes.

(*e*) Full information should be lodged with the Mining Department before any mine is abandoned, so as to facilitate the continuance or future resumption of working.

(*f*) The Mining Department should be equipped with adequate information and powers to safeguard the proper development of mineral fields, and to secure the working of minerals which would otherwise be lost to the nation.

(*g*) Whenever it can be shown that the best development of the nation's mineral resources is impeded by a right of private property, the Sanctioning Authority should grant compulsory powers to deal with the situation on fair terms to the owner.

Thus—

(*h*) The Sanctioning Authority should where it is in the national interest make compulsory orders for the acquisition of minerals with all necessary working powers.

(*i*) The Sanctioning Authority should, in proper cases, by compulsory order, grant wayleaves, both above and below ground, and surface rights.

(*j*) To prevent the loss of minerals caused by the surface owner having a right of support, we propose that the Sanctioning Authority should, in proper cases, make com-

* In our First Report we recommended that a new Sanctioning Authority should be created, and that to this Sanctioning Authority should be referred every application for power to acquire land compulsorily, with certain exceptions in the case of Local Authorities. The Sanctioning Authority would be composed of Members of both Houses of Parliament, with the addition of outside members of experience in various spheres of national life, including Labour, and would, in effect, be a Joint Committee of the two Houses of Parliament.

pulsory Orders for the working of minerals, with power to let down the surface, subject to compensation for all damage caused thereby to the surface owners. Such compensation should be secured by the creation of an insurance fund, which should be contributed to by all parties benefited by the release of the minerals in question, the liability of the mineral worker being limited to his premiums. In order that the surface owner may have adequate security in the initial stages of the insurance fund, and before risks have been ascertained, the insurance fund should be guaranteed by the State.*

(*k*) The Sanctioning Authority should in any compulsory order have power to make such provisions both as to the methods of working the minerals and as to the existing and future user and development of the surface as may be calculated to minimise damage to the surface caused by the working of the minerals. Such provisions should be made subject to payment of proper compensation to any person affected, and, of course, with due regard to the public advantage from all points of view.

(*l*) Any surface owner who has no right of support should have power to apply to the Sanctioning Authority for an order giving him such right of support, if any, as may be reasonable under the circumstances, and on such terms as the Sanctioning Authority may determine.

(*m*) In order to minimise the loss of coal left in barriers, the Mining Department should have power to prepare a scheme dealing with all the barriers in a mineral field, and the Sanctioning Authority should, after hearing all parties concerned have power to approve the scheme and make such order as may be appropriate regarding the barriers to be left or substituted, the working of the barriers which are to be worked and the protection of all parties affected.

(*n*) Where there is a possibility of loss to the nation arising from mineral products being landlocked or bound by restrictive covenants, the Sanctioning Authority should deal, by compulsory Order, with such cases upon fair terms of compensation to the owner, or the person entitled to the benefit of such covenants.

(*o*) The types of case referred to by us in paragraph 5 (viii. and ix.) may also sometimes call for the intervention of the Sanctioning Authority. It should be clearly understood that we do not suggest such intervention merely because one of the parties has made a bad bargain; but where, unless the bargain between the parties is modified, the nation may suffer a loss of minerals which might be worked with economic advantage to the nation, we are of opinion that there would be a case for an application to the Sanctioning Authority for a compulsory Order.

(*p*) We anticipate that in those cases where interference with existing rights is required in the national interest, the Mining Department will endeavour to effect an arrangement between the parties concerned and that recourse to the Sanctioning Authority for a compulsory Order will only be necessary in those cases in which such an arrangement is found to be impossible. Indeed, one of the chief merits of our recommendations as to the acquisition of compulsory powers, is that voluntary agreement will be greatly facilitated by the knowledge of all parties that in proper cases compulsion is available in the last resort.

7. In our opinion the constitutional, legal and administrative changes which we have summarised above, will free the development of the mineral resources of the country from most of the hindrances to which it is liable under the present system of working.

We believe also that the disadvantages which we have enumerated as inherent in the present system constitute some of the chief reasons in the minds of many of those who are in favour of nationalisation. We do not conceive it to be within our province to express any opinion whatever on nationalisation, except from the point of view of the specific questions referred to us. But, in our opinion, if the disadvantages we have mentioned are remedied by the means which we recommend, the main drawbacks of the existing system, so far as our terms of reference are concerned, will disappear, and the development of the mineral resources of the country will be substantially promoted. And we do not think that any form of State ownership or working would provide as good a remedy for these disadvantages as the remedies which we recommend.

We are, Sir,
Your obedient Servants,

18th March, 1919.

(Signed) LESLIE SCOTT.
W. FORSTER-BROWN.
JAMES J. DAVIDSON.
DIXON H. DAVIES.
R. ELLIOTT-COOPER.
GEORGE M. FREEMAN.
W. S. HALDANE.
WM. MIDDLEBROOK.
ADAM NIMMO.
THOS. R. RATCLIFFE-ELLIS.
C. E. RHODES.
ARTHUR T. THRING.

(Signed) H. EUSTACE DAVIES,
Secretary.
BERNARD H. DRAKE,
Asst. Secretary.

*The merit of this proposal obviously depends on the detailed provisions for working out the scheme, which will appear in our Main Report.

Memorandum by Mr. A. S. COMYNS CARR and Mr. ELLIS DAVIES.

We regret that we cannot see our way to sign this Report, although we are in substantial agreement with the whole of it, except the last paragraph, but that appears to us to be altogether too sweeping.

We think that many of the results at which we are aiming might be attained by national ownership of minerals, whatever may be said for or against that proposal on financial or other grounds. While we do not, as at present advised, think that the creation of a gigantic State monopoly in the working of minerals would tend on the whole to greater efficiency, we are convinced that full development of our mineral resources will never be secured unless the State is able and prepared both to take over and work inefficiently managed mines, and to take an active part by exploration and research in developing new fields.

(Signed) A. S. Comyns Carr.
Ellis Davies.

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